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Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1406

CITY OF LOS ANGELES, a municipal corporation,
Petitioner,

vs.

GREATER WESTCHESTER HOMEOWNERS ASSOCIATION, etc., *et al.*,
Respondents.

BRIEF OF *AMICUS CURIAE* CITY AND COUNTY OF SAN FRANCISCO IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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BRIEF OF *AMICUS CURIAE* CITY AND COUNTY OF SAN FRANCISCO IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The City and County of San Francisco, a municipal corporation, acting by and through its Airports Commission, respectfully submits its brief, *amicus curiae,* with the consent of the parties pursuant to United States Supreme Court Rule 42, in support of the position advanced by Petitioner City of Los Angeles. Copies of the letters of consent are filed herewith.

INTRODUCTION

Your *amicus curiae,* City and County of San Francisco, by and through its Airports Commission, owns and operates San Francisco International Airport (SFO), which is located physically outside the jurisdictional boundary of San Francisco and entirely within San Mateo County, California.

SFO is the sixth busiest publicly owned, commercial airport in the world and the fifth busiest airport in the Nation in terms of passenger traffic; it serves approximately 24 million passengers a year and accommodates every domestic major trunk air carrier in the United States, many foreign flag carriers and a sizable amount of general aviation. Specifically, for the calendar year ending December 31, 1979, SFO handled 367,435 aircraft operations, which transported 102,292 tons of mail, 382,730 tons of airfreight/express and 24,159,924 passengers.

SFO serves all of northern California, western Nevada, southern Oregon and southwest Idaho and has a major impact on interstate commerce and the economy of this entire region of the United States. SFO is also the northern terminus of the most heavily traveled air corridor in the world.*

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* Los Angeles is the southern terminus of this corridor.

It is clear from the foregoing description that SFO plays a major role in the national air transportation system and hence is inevitably affected by the decision of the California Supreme Court in *Greater Westchester Homeowners Association* v. *City of Los Angeles,* 26 Cal. 3d 86 (1979) which holds the local proprietor of an airport liable for nuisance damages resulting from the noise related to aircraft in flight.

The interest of your *amicus* in this case concerns the economic effect of the decision in *Greater Westchester* that erroneously imposes an untold financial burden on a local public agency, as the proprietor of an airport, for conduct which is legally beyond its control. This *amicus* has further concern about the effect of the decision in *Greater Westchester* in that by making a local public agency (such as this *amicus*) assume liability for nuisance damages caused by aircraft noise, it places this *amicus*—as well as other local public agencies—between Scylla and Charybdis by forcing your *amicus* to adopt local noise abatement rules and regulations (to avoid nuisance liability) which will conflict with the Congressional intent to establish a national air transportation scheme based on a comprehensive, federally-regulated balance between the "highest degree of safety" and the effective control of airport noise.

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

1. Preliminary Statement

Your *amicus,* City and County of San Francisco, adopts by reference the brief of Petitioner City of Los Angeles in the Petition for Writ of Certiorari.

2. The Problem Created By Greater Westchester

In support of the Petition and to assist the Court, this *amicus* wishes to bring to the Court's attention and to have it take notice of the frustrating, unresolved problem this *amicus* has faced in trying unsuccessfully to participate from the local level in the federal scheme of regulation and control of airport noise and at the same time satisfy the noise standard require-

ments of the State of California. This is a problem which is now aggravated by the decision in *Greater Westchester* because it interjects a collateral, mandated form of regulation in the already complex nationwide plan to control airport noise: regulation by a state court (non-airport proprietor) through the award of money damages. See *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959). Further, *Greater Westchester* obscures the particular authority or ability, if any, the local airport proprietor has to regulate and control airport noise that in fact originates from a source beyond the proprietor's command: aircraft in flight. Stated another way, the problem generated by *Greater Westchester* creates the need for this Court to provide a definition and declaration of authority—or inversely, of responsibility—sufficiently precise to permit the airport proprietor to avoid nuisance liability by conforming its conduct to function within the national air transportation scheme while meeting the requirements of the law.

In conjunction with the other *amici curiae* supporting the Petition, your *amicus*, City and County of San Francisco, will illustrate the administrative fact of federal control over the national air transportation system and thereby show the inability of the local airport proprietor to exercise authority to mitigate aircraft noise in any manner inconsistent with the pervasive, comprehensive noise policy of the Federal Government—a fact which effectively manifests the intent of Congress in the Federal Aviation Act of 1958[1] and the Noise Control Act of 1972,[2] to place the problem of aircraft noise under the exclusive control of one decision-maker to establish a uniform federal regulatory scheme. This intent of Congress to preempt state and local control over aircraft noise was clearly stated by this Court in *City of Burbank* v. *Lockheed Air Terminal, Inc.*, 411 U.S. 624 (1973), and then echoed and followed by the Seventh Circuit Court of Appeals in *Luedtke* v. *County of Milwaukee*, 521 F. 2d 387 (1975).

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[1] 72 STAT 731, 49 U.S.C. Sec. 1301 *et seq.*

[2] 86 STAT 1234, P.L. 92-574.

THE RECENT HISTORY OF NOISE CONTROL EFFORTS AT SFO

Plainly stated, the California Supreme Court, in its decision in *Greater Westchester,* has totally misconstrued the rights and obligations of a local public agency-airport proprietor in the national aviation scheme and has, thereby, erroneously imposed an absolute liability on the local proprietor for conduct clearly beyond its control. As an aid to depict the error of *Greater Westchester,* your *amicus* brings to the Court a picture of the federal preemptive administrative action taken against efforts to adopt noise control measures at SFO.

1. The Interim Noise Policy Adopted at SFO

On January 16, 1979, the San Francisco Airports Commission adopted an Interim Noise Policy at SFO by Resolution No. 79-0003 (Appendix A) for the purpose of ameliorating noise problems caused by planes in flight in the vicinity of SFO. The resolution simply required that carriers inaugurating service at SFO use aircraft which complied with the noise level requirements of Part 36 of the Federal Aviation Regulations (FAR) of the Federal Aviation Administration (FAA). In adopting this resolution, your *amicus* in good faith sought to impose noise level standards which the Federal Government itself had established.

Upon review, the General Counsel of the FAA and the Civil Aeronautics Board (CAB) informed the San Francisco Airports Commission (see Appendices D and E) that the adopted policy was legally deficient under Federal law in that:

> 1. It conflicted sharply with federal policy as set forth in the Airline Deregulation Act of 1978 (P.L. 95-504) which was enacted to foster entry of newcomers into new interstate markets.

2. It appeared to violate the Constitutional prohibitions against discriminatory local regulation of interstate commerce in its applicability to new but not to incumbent airlines.

3. It raised possible conflict with grant assurances under the Airport and Airway Development Act (49 U.S.C. Sec.1718) and thus jeopardized the right of this *amicus* to receive federal grant money.

4. It may have violated Section 308(a) of the Federal Aviation Act (49 U.S.C. 1349(a)) which prohibits exclusive use of a facility upon which Federal funds have been expended.

5. It may have conflicted with a detailed federal noise policy developed by the Department of Transportation.

The FAA recommended adoption of an alternate interim noise policy *based on* the noise level requirements of FAR Part 36 as specified in FAA Advisory Circular 36-3 (AC 36-3). This *amicus,* acting again in good faith and reliance on the FAA, rescinded the previously adopted Interim Noise Policy by Resolution No. 79-0297 (Appendix B) on August 21, 1979, and took steps to implement a new policy based on AC 36-3. Parenthetically, this Circular was subsequently found to be technically inaccurate and consequently rendered the proposed alternate interim noise policy unsound and ineffective even as a short-term regulatory method of aircraft noise control (discussed at pp. 9-10). In its Resolution No. 79-0351 (Appendix C) adopted on October 2, 1979, the San Francisco Airports Commission stated that it could not responsibly implement a noise policy based upon the errors and inaccuracies in AC 36-3 and urgently requested the FAA to supply technical talent to work with SFO in the development of yet a new policy to be adopted by the Airports Commission not later than December 4, 1979. Since no technical assistance was provided by the FAA, the Airports Commission took no action on December 4 to adopt an alternate interim noise policy but rather put the

matter in abeyance until such assistance was forthcoming. Soon thereafter, on December 14, 1979, the California Supreme Court rendered the *Greater Westchester* decision. As of this writing, no adequate technical assistance or administrative guidance has been provided to SFO by the FAA (nor the CAB) for the development of an effective noise control plan consistent with federal policy.

2. The Intervening Issue

Indeed, what follows is obvious: your *amicus*, City and County of San Francisco, now faces absolute liability in tort for damages caused by the noise from aircraft in flight at SFO. Yet, in its efforts to control noise at SFO (and thereby avoid or abate any nuisance liability resulting from the *Greater Westchester* decision), your *amicus* continues to be confronted with the federal challenge that SFO is overstepping its regulatory powers and is in conflict with a uniform federal air transportation scheme. The question must now be asked: How does the City and County of San Francisco, as proprietor and operator of SFO, extricate itself from this "Catch-22" situation?

The frustration of this situation can be further amplified. There has been extensive correspondence between this *amicus* and the FAA and the CAB and from other interested agencies and parties since the adoption of the SFO Interim Noise Policy on January 16, 1979, that vividly illustrates the problematic administrative dilemma your *amicus* is facing at SFO in trying to effectuate noise control measures consistent with federal standards (which also satisfy state requirements) and likewise be responsive to the legitimate environmental concerns of the communities surrounding SFO. Copies of particularly relevant correspondence are included in this brief as Appendices and are discussed in the following to show the actuality of the federal intention to preclude any unilateral exercise of control by a local airport proprietor over noise from aircraft in flight. Absent the ability to exercise such control, how can an airport proprietor logically be held liable in tort for nuisance damages caused by the noise from aircraft in flight?

3. Federal Agency Administrative Action Concerning SFO Demonstrates Federal Preemption

As noted, the FAA and the CAB took immediate action against the SFO Interim Noise Policy which was adopted on January 16, 1979 (Appendix A). Appendices D and E, letters from the CAB dated February 13, 1979, and the FAA dated March 2, 1979, respectively, attack the resolution as being contrary to law and as usurping an area preempted by the Federal Government. Thus, while on the one hand the FAA enunciated its Aviation Noise Abatement Policy[3], on the other hand, it threatened legal action against SFO's attempt, as a noise abatement measure, to require compliance by aircraft with noise standards established by that same FAA. What follows now is a chronological trail of administrative correspondence—and action—in consequence to the FAA and the CAB declarations against the SFO Interim Noise Policy.

The San Francisco Airports Commission responded to these threats of punitive action in a letter dated March 21, 1979 (Appendix F), by stating its willingness to reevaluate the Interim Policy in view of the federal objections raised and to cooperate with the FAA and the CAB in the development of a policy both legal and effective in dealing with the noise problems at SFO. Direct consultation with the Federal Government was stressed by the Airports Commission as a much preferred alternative to legal confrontation on the threatened issues. The Airports Commission further sought to familiarize the federal agencies with the absolute necessity of the Interim Policy as a positive, necessarily stringent measure to maintain compliance with the State of California noise standards, as well as federal noise *and safety* requirements, until a long-range noise control policy could be developed in concert with the ongoing Airport Joint Land Use Study (between SFO and San Mateo County).

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[3] FAA, Department of Transportation, Aviation Noise Abatement Policy (November 18, 1976).

In connection with federal policy, there is a Regional Transportation Plan (RTP) in the San Francisco Bay area which provides for a balanced regional airport system; it was developed by the Metropolitan Transportation Commission (MTC)[4]. In its response to the CAB on March 21, the San Francisco Airports Commission identified the challenged Interim Policy as directly responsive to the RTP. To confirm this fact, the Airports Commission referred to a letter dated March 14, 1979 (Appendix G), in which the MTC expressed concern that the CAB's position could undermine regional as well as local airport regulatory policies, particularly since the MTC itself had passed a resolution supportive of the SFO Interim Policy.

The MTC pointed out that the adoption of the Interim Policy by the San Francisco Airports Commission was in the furtherance of the FAA-subsidized goals of the regional plan in that it sought "a redistribution of future airline traffic among San Francisco, Oakland and San Jose airports in order to maximize runway and airspace and air safety—and to minimize airport noise and air pollution." (See Appendix G)

The CAB's response to the MTC analysis on April 3, 1979 (Appendix H), reiterated the conflict between the Interim Policy and "the letter and spirit" of the Airline Deregulation Act of 1978. While asserting that SFO was capable of and responsible for the construction of a nondiscriminatory plan to limit aircraft operations, the CAB also cautioned that the question of whether this plan would conflict with the federal scheme was one primarily for the DOT and the FAA to answer.

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[4] The MTC is a local area planning agency for the region (San Francisco Bay Area) comprised of the City and County of San Francisco and the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano and Sonoma. Its statutory authority lies in Title 7.1 of the California Government Code, Sections 66500-66522. Two general functions of the MTC, among others, are to review transportation and transportation-related projects for compatibility with the RTP, and to make recommendations concerning allocations of grant money available under federal and state transportation assistance programs.

On April 9, 1979, and on May 15, 1979, the FAA and the CAB, respectively, reaffirmed their positions on the illegality of the Interim Noise Policy in written responses to SFO (Appendix I) and to the request of a community organization, *Save San Francisco Bay Association* (Appendix J), to reconsider the policy as a solution to the environmental problems facing SFO.

Continuing with the chronology, as indicated, on August 21, 1979, the SFO Interim Noise Policy was rescinded by Resolution 79-0297 (Appendix B). SFO staff, relying on the advise and technical expertise of the FAA, then took immediate action to develop an alternate interim noise policy based upon the aforementioned noise standards in AC 36-3. However, as mentioned, AC 36-3 was subsequently found to be inaccurate due to substantial errors made by the FAA in the publication of AC 36-3 which rendered the proposed alternate interim noise policy at SFO unusable.

On September 25, 1979, in a memorandum to the Airports Commission (Appendix K), SFO's Director expressed the administrative frustration over the impossibility of predicting the effect of any interim policy based on such a document. But recognizing the need for SFO to develop immediate noise mitigation measures which would maintain SFO in compliance with State noise law, SFO's Director recommended that the Commission demand by formal resolution assistance from the FAA no later than December 4, 1979.

On October 2, 1979, the Airports Commission unanimously passed Resolution No. 79-0351 (Appendix C); it requests the FAA to assign a high-level technician to work in the development of a new SFO noise policy. This resolution was sent to the FAA on October 5, 1979, with a cover letter (Appendix L) in which SFO alleged that the FAA AC 36-3 contained "substantial errors"—an allegation which was also raised by the Air Transport Association (ATA) in a letter to the FAA on October 9, 1979 (Appendix M).

The allegations of "substantial errors" in AC 36-3 were ultimately confirmed by conversations between SFO and FAA officials and staff personnel (see October 5 letter, Appendix L). Furthermore, the October 5 letter emphasized the upsetting effect on the surrounding community created by the failure of the inaccurate FAA Advisory Circular and the resulting urgency to develop a policy which would abate aircraft noise at SFO.

The immediacy of the need to correct the problem created by the errors in the FAA AC 36-3 was recognized by Congressman John L. Burton, Chairman of the Government Activities and Transportation Subcommittee of the House of Representatives, in his written request to the FAA on October 24, 1979, for technical assistance at SFO (Appendix N).

In a memo dated November 7, 1979 (Appendix O), the FAA denied having any knowledge of inaccurate aircraft noise levels in the 36-3 Circular. And the FAA Chief Counsel, in a letter of the same date (Appendix P), admitted that the Circular contained "relatively minor" technical errors but claimed such errors did not in any way affect the concept of the regulation. The errors were explained as an inevitable result in the continually changing subject of aviation noise and that revisions would be forthcoming. The FAA likewise rejected the charges by the ATA that the 36-3 Circular was unsuitable as a basis for establishing an SFO noise policy and confirmed the Circular as their stated policy to reduce aircraft noise impacts around airports in this country (Appendix Q).

The FAA and the CAB made no direct response to the Airports Commission resolution of October 2, 1979, which requested technical assistance. But, in furtherance of the request, on October 25, 1979, SFO again formally solicited the FAA Administrator for immediate assistance in SFO's efforts to design a noise monitoring system needed to implement a noise control policy (Appendix R). The FAA stated its inability to assign the needed technical personnel to the SFO effort in a brief reply one month later (Appendix S).

In a series of letters to the FAA in late November 1979 (Appendices T, U and V), SFO's Director reiterated SFO's continuing frustration and persisted in seeking FAA assistance in the development of a noise monitoring system that would correct the technical problems created by Circular 36-3 and so permit this *amicus* to lower aircraft noise levels sufficiently, in order to avoid the imposition of operational restrictions denounced by the federal authorities. On December 13, 1979, the FAA defended its position on the technical sufficiency of AC 36-3 and passively recommended the adequacy of indirect technical support to SFO by consultants for the Massachusetts Port Authority in correspondence to SFO's Director (Appendix W; see also Appendix S).

On January 9, 1980, in a letter to the FAA Chief Counsel (Appendix X), SFO's Director expressed an unchanged concern with respect to the technical insufficiency of AC 36-3, requested verification of a proposed FAA revision and plaintively asked: "When can we anticipate receiving this revision?".

The January 9 letter ends the trail of administrative correspondence. As of now, your *amicus* has received neither a response nor an official notification of any revision to AC 36-3, nor has there been further federal response to SFO's dilemma of trying to implement an environmentally sound noise control policy at SFO—one which is balanced with the "highest degree of safety."

4. Sequel

As a Parthian shot, on April 1, 1980, the San Francisco Airports Commission, acting once more with a good faith effort and reliance on the fact that the Federal Government preempts the field of regulation of noise from aircraft in flight, adopted Resolution No. 80-0080 (Appendix Y). It effectively urges the FAA officials, air carriers and pilots to utilize their respective control over aircraft operations to provide relief and protection from aircraft noise to San Francisco and densely populated areas of the Bay Area—relief and protection which your *amicus* has neither the power nor the authority to provide.

CONCLUSION

In view of the prominent conflict between the intent of Congress to regulate the Nation's complex air transportation system under a uniform federal scheme (as positively voiced by this Court in *Burbank*), and the effect of the decision by the California Supreme Court in *Greater Westchester*, it is apparent that the local public agency-airport proprietor is inextricably enmeshed in the frustrating predicament of being unable to regulate aircraft noise but having to assume liability for noise damage. The efforts of your *amicus*, City and County of San Francisco, to disentangle itself from this web of continuing countermand illustrates the Sisyphean task facing the airport proprietor. If the *Greater Westchester* decision is allowed to stand, it will operate as a financial burden which the airport proprietor alone must bear without a means of ameliorating the real problem: noise emanating from aircraft in flight.

In virtue of the need to reconcile the disharmony created by the *Greater Westchester* decision, a review by this Court is in order and the Petition for Writ of Certiorari should be granted.

Respectfully submitted.

GEORGE AGNOST,
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Airports General Counsel
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By: .....
David I. Kroopnick
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Dated: April 10, 1980

Appendix A

AIRPORTS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 79-0003

WHEREAS, The City and County of San Francisco, the County of San Mateo and the San Francisco International Airport are presently engaged in a comprehensive land-use study; and,

WHEREAS, One of the purposes of that study is to determine methods by which the adverse environmental impacts, particularly noise impacts, of the Airport may be reduced; and,

WHEREAS, The Civil Aeronautics Board and the Federal Government have adopted a policy of de-regulating the airline industry; and,

WHEREAS, The implementation of that de-regulation policy has had and will continue to have the effect of increasing the operations of commercial jet aircraft at this Airport; and,

WHEREAS, Those increased operations may well cause substantial increases in the noise impact of the Airport on its surrounding neighbors and,

WHEREAS, The aforementioned Land-Use Study has developed a substantial base of data upon which decisions can be predicated which data may become inaccurate if a proliferation of operations is permitted to occur at this time; and,

WHEREAS, The Airports Commission and staff are now preparing as part of the land-use study an operations plan which will include a variety of measures designed to reduce noise impacts on the surrounding communities; and,

WHEREAS, The orderly completion of the land-use study and of the Airport's operations plan can only be accomplished in a relatively stable operating situation; and

AIRPORTS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 79-0003

WHEREAS, This Commission basically favors the de-regulation policy and does not desire to restrict competition nor does it desire to discriminate against or in favor of any air carrier, but this Commission also finds that some immediate short-range action must be taken to prevent an unreasonably large increase in operations at this critical time in the development of the land-use study which increase might well create an unreasonably large increase in airport-generated noise; and,

WHEREAS, This Commission further finds that the interim policy herein set forth and hereby adopted is neither anti-competitive nor discriminatory in view of the unused airfield capacity in the Bay Area;

NOW THEREFORE, BE IT HEREBY RESOLVED:

1. That this Commission hereby adopts this Policy as an interim measure to remain in effect until either the completion of the land use study or until the completion, acceptance and implementation of an Airport operational plan designed to reduce the adverse effects on the surrounding communities of Airport generated noise, whichever event first occurs.

2. Any commercial air carrier which is not now operating but which has the legal right to operate and which desires to operate into and out of San Francisco International Airport shall be required to first present to the Airports Commission at a public hearing a full operating plan indicating the times, routes and frequencies of all proposed flights, the aircraft to be utilized and the arrangements which are proposed to be made to deal with the servicing of aircraft, the handling of passengers baggage and freight, etc. Such plan shall

specifically indicate whether or not each aircraft which the carrier proposed to utilize is certified as meeting the noise standards of the Federal Aviation Regulations, Part 36. Such plan shall be subject to the Commission's approval.

3. It shall be the general policy of the Airports Commission to approve sub-leases or service agreements for such new air carriers and to sign Landing Fee Agreements with such carriers only when those carriers agree to exclusively utilize aircraft which are certified as meeting the noise requirements of Federal Aviation Regulation Part 36 throughout the time this Policy is in effect.

4. It shall be the policy of the Airports Commission to take such appropriate actions as may be available to it to support the goals of the Airport element of the Regional Transportation Plan so as to provide a convenient level of air transportation service to all Bay Area residents.

I hereby certify that the foregoing resolution was adopted by the Airports Commission at its meeting of JAN 16 1979

Secretary

Appendix B

AIRPORTS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 79-0297

WHEREAS, This Commission has previously adopted, by Resolution 79-0003, January 16, 1979, an Interim Noise Policy; and

WHEREAS, The General Counsels of the Federal Aviation Administration and the Civil Aeronautics Board have informed this Commission that the adopted policy is legally deficient under Federal law in that it discriminatorily applies to new aircraft but not to incumbent carriers; and

WHEREAS, This Commission desires to adopt, and intends to adopt, an aircraft noise level control regulation on an interim basis which will be more effective than the existing policy; now, therefore, be it

RESOLVED, That this Commission announces its intention to adopt an interim aircraft noise level control regulation basically as recommended by the Airport Director; and be it further

RESOLVED, That the Commission sets for public hearing at its regular September 4 meeting the question of the actual decibel level to be incorporated into said regulations; and be it further

RESOLVED, That in order to avoid any hold-up in ADAP funding, this Commission hereby annuls and revokes Resolution 79-0003.

I hereby certify that the foregoing resolution was adopted by the Airports Commission at its meeting of AUG 21 1979

Secretary

Appendix C

AIRPORTS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 79-0351

WHEREAS, The San Francisco Airports Commission, in an attempt to protect the surrounding communities against a large influx of noise as a result of deregulation and in order to maintain the integrity of the data developed by the Joint Land Use Study, adopted an Interim Noise Policy affecting new carriers at this Airport; and

WHEREAS, The Federal Aviation Administration declared such Policy to be discriminatory and illegal and threatened to withhold vitally needed ADAP funds until such Policy was rescinded; and

WHEREAS, The FAA recommended adoption of an alternative Interim Noise Policy based on FAA Circular 36-3; and

WHEREAS, This Commission, acting in good faith and reliance on the FAA, rescinded the previously adopted Interim Noise Policy and took steps to implement a new policy based on said Circular 36-3; and

WHEREAS, Investigation has now revealed that FAA Circular 36-3 is inaccurate as to many of the aircraft listed and fails to list many of the aircraft operating at San Francisco; and

WHEREAS, This Commission cannot responsibly adopt a Noise Policy based upon an inaccurate and inconsistent document; now, therefore, be it

RESOLVED, That this Commission strongly requests that the FAA immediately supply top level technical talent to San Francisco International

AIRPORTS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 79-0351

Airport to work with the Airport's Noise Abatement Officer and with the Project Director and Consultants for the Joint Land Use Board in order to develop a Noise Policy that will ensure that this Airport can remain in compliance with the State of California Noise Law at least through December 31, 1980, and that such Policy be developed so that it can be adopted by the Commission not later than December 4, 1979.

I hereby certify that the foregoing resolution was adopted by the Airports Commission at its meeting of OCT 2 1979

Secretary

Appendix D

CIVIL AERONAUTICS BOARD
WASHINGTON, D.C. 20428 IN REPLY REFER TO

February 13, 1979

Mr. Richard R. Heath
Director of Airports
Airports Commission
City and County of San Francisco
San Francisco International Airport
San Francisco, California 94128

Dear Mr. Heath:

I have received your letter of January 18, 1979, and have analyzed San Francisco Airports Commission Resolution No. 79-0003 (January 16, 1979). The Civil Aeronautics Board shares your concern for the environment of the area surrounding San Francisco International Airport. The Board sees to it that the environmental implications of its actions are considered at every stage of the decision-making process. We are also eager to help airport proprietors, such as the Commission, to take reasonable steps to protect their airport's environment. It is in a spirit of cooperation that I and the Board's legal staff have reviewed Resolution No. 79-0003.

The resolution severely restricts the use of San Francisco International Airport by new airlines not currently serving that airport. The resolution reflects the Commission's apparent belief that reduced federal economic regulation of air transportation may lead to an increase in commercial jet aircraft operations at the airport, and in turn to added noise levels in surrounding communities. The resolution restricts new airlines in several specific ways. It requires entering airlines to present to the Commission substantial information about proposed operations. Airline arrangements involving San Francisco Airport concerning routes, scheduling, aircraft to be used, and groundside arrangements, require approval of the Commission. In addition, the resolution puts the Commission in the position of approving subleases and service arrangements involving entering carriers and provides that landing fee agreements will be made "only" with "those carriers [who] agree to exclusively utilize aircraft which are certified as meeting the noise requirements of Federal Aviation Regulation Part 36." Finally, through the resolution the Commission assumes responsibility to take "appropriate actions. . . to provide a convenient level of air transportation service to all Bay Area residents."

FEB 1 '79

I have fundamental legal reservations about the method the Commission has chosen here to advance the obviously important environmental goals which you and the Board want to meet. The action of the Commission conflicts sharply with federal policy as set forth in the Airline Deregulation Act of 1978 (P.L. 95-504), which was enacted to foster entry by air carriers into new interstate markets. In addition, the resolution's applicability to new but not incumbent airlines appears to violate the Constitutional prohibitions against discriminatory local regulations of interstate commerce, see e.g., British Airways v. The Port Authority of New York, 558 F.2d 75 (2d Cir. 1977). It raises as well the possibility of conflict with grant assurances under the Airport and Airway Development Act (49 U.S.C. Sec. 1718) and thus may jeopardize your right to receive federal grant money administered by the Department of Transportation. The resolution may also violate section 308(a) of the Federal Aviation Act (49 U.S.C. 1349(a)), which provides in part:

> "There shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended."

Finally, any attempt to dictate the type of aircraft to be operated -- even if applied even-handedly -- may conflict with a detailed federal noise policy developed by the Department of Transportation. In light of these legal shortcomings, the Commission may wish to consider rescinding or substantially amending Resolution 79-0003 to conform to federal law. As it stands now, it is vulnerable to legal challenge. And, since it conflicts with the policy of the Airline Deregulation Act which this agency is charged with administering, if the resolution remains in effect, I must consider recommending legal action by the federal government. On the other hand, should the Commission replace it with a non-discriminatory policy restricting use of the airport, we, and I am sure the Department of Transportation, would be more than happy to evaluate that policy independently.

There are three important factors in considering the legality of a restrictive airport use decision. First, is the restriction discriminatory? Second, if the restriction is not discriminatory, is it nevertheless unduly burdensome to interstate commerce? Finally, does the restriction relate to the routes, rates or services of any airline in interstate commerce under authority of the Civil Aeronautics Board?

The Commission's action is discriminatory and thus unlawful because it places substantial and perhaps insurmountable burdens on entering airlines which incumbent airlines do not bear, and puts new entrants at a significant disadvantage in seeking to compete in San Francisco markets. While incumbent carriers are free to add to their schedules at will, and thus may increase their flight frequencies as they choose, the resolution makes scheduling and other operating decisions of entering carriers the subject of a public proceeding, and allows those decisions to stand only if the Commission approves them. In addition, while incumbent carriers may serve the airport with aircraft meeting current federal noise requirements, the resolution places a much stricter standard on the operations of new entrants and, in fact, forbids them to operate the same type of aircraft that incumbents may operate.

The particular method the Commission chose to protect against noise may conflict with an area that the federal government has preempted and may also unduly burden interstate commerce. The federal government has a comprehensive noise policy that phases out noisy aircraft over a four-year period and requires airlines to begin flying quieter aircraft in 1981 and to conform their entire fleets by 1985. If the San Francisco Airport, as it purports to do, or any other airport enforces more stringent equipment requirements, there would be a conflict with an area of regulation that the federal government may have preempted and there would probably be a serious disruption in interstate air service because planes lawfully departing from, say, Chicago, New York or Denver would not be able to land in San Francisco.

Non-federal enactments relating to routes, rates and schedules are clearly forbidden by section 105(a)(1) of the Federal Aviation Act. While I understand the desire of the Commission that there should be "a convenient level of air transportation service" available to Bay Area residents, any effort by the Commission to decide what that level of service is and to achieve it through the regulation of Bay Area airports is strictly prohibited by section 105(a)(1). The reason is because the Congress decided that those kinds of decisions should be made by travelers and shippers directly through the free play of market forces and that, to the extent governmental decision-making should replace competition and free consumer choice, the CAB should be the sole judge regarding airlines conducting interstate air service. The reason the Congress wants one decision-maker is obvious when you consider the chaos to interstate air service that would result if hundreds of airports around the Nation were conditioning landing and take-off rights on decisions about where airlines should be flying to and coming from.

Although my legal analysis of the situation does not support the Commission's action, perhaps you may wish to reconsider the policy, as well as legal, assumptions underlying the resolution in light of the considerable body of evidence that suggests that a competitive airline system is more likely than a strictly regulated system to minimize environmental damage. The Commission's premise seems to be that competition and new entry will cause an unacceptable increase in commercial jet operations at San Francisco International Airport. This is not necessarily the case. When airlines are forced to compete in markets, actual competition and the threat of competition by other airlines stimulate incumbent carriers to keep ticket prices down and to operate planes nearly full rather than half empty. Without adequate competition, the demonstrable tendency is the reverse: air carriers tend to charge higher ticket prices, but they compete away the extra revenues in scheduling competition -- by offering more flights and thus more operations. This is a situation with which we are thoroughly familiar at the CAB. For almost forty years the CAB regulated the airlines in a way that discouraged price competition. This produced extensive frequency competition, with the result that many airports were subjected to many more landings and takeoffs than were necessary to carry the traffic.

It is the number of aircraft operations rather than the number of airline passengers or the identity of the airline that determines how much noise people living near an airport must suffer. While the lower ticket prices of recent months have stimulated travel, the incentives of deregulation -- if price competition is allowed to develop without restriction -- are toward putting more passengers in the airplanes before putting more planes in the air. When an airline has to compete in price and keep its costs low, it will tend to hold actual aircraft operations to a minimum. And our experience shows that easy entry by non-incumbent carriers is the single most powerful force to stimulate price competition. If air carriers not currently serving an airport can arrange to use it without undue difficulty, the mere threat of new entry will encourage incumbent carriers to keep ticket prices as low as possible, and to fill their planes rather than operate half-empty flights, so as to avoid expenses which might make low fare operations unprofitable. So, discriminating against new airlines, and giving significant advantages to existing airlines not only conflicts with federal law but may well conflict with a sound environmental policy also.

The increased competition from new airlines and higher load factors also results in improved energy efficiency. A recent Air Transport Association study shows that scheduled airlines used 50 million gallons less fuel in 1978 than 1973 while carrying 78 million more passengers. Competition and the resulting higher load factors also explain why there were less than two percent more systemwide airline departures in fiscal year 1978 than in the preceding year while passenger emplanements rose nearly 12 percent. At some airports -- and our fiscal year 1978 figures show San Francisco to be one of them -- the actual number of departures decreased slightly while the number of passenger emplanements rose significantly. Figures for the first quarter of fiscal year 1979 show that although San Francisco International departures have increased modestly over the same quarter of the previous year, actual emplanements increased over 18 percent. Since we are still in a period of adjustment and transition, I would caution anyone, including myself, against using recent statistics to make firm predictions about the future. But, the indications are that increased airline competition and a better environment are not at all incompatible.

I would therefore urge you not only to reconsider the resolution but to consider carefully as well what impact new authority will have on San Francisco International Airport's environment before you make any decisions regarding restrictions which might be proposed to protect the community's environment. If you determine that restrictions are required in spite of the favorable environmental consequences which may result from increased competition, I urge you to make them consistent with the important legal requirements I have outlined.

Let me repeat again this agency's sincere willingness to be of help. I have been in contact with Clark Onstad, Chief Counsel of the Federal Aviation Administration, and am confident of his and the Department of Transportation's willingness to also assist you in the discharge of your legitimate and difficult proprietary duties. Both the CAB and the DOT will do all we possibly can to help you implement a plan which meets important legal and environmental requirements.

Sincerely,

Philip J. Bakes, Jr.
General Counsel

cc: Clark Onstad
Chief Counsel, FAA

Appendix E

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

WASHINGTON, D.C. 20591

MAR 2 1979

Mr. Richard R. Heath
Director of Airports
San Francisco International Airport
San Francisco, California 94126

Dear Mr. Heath:

I appreciate your providing me with a copy of Resolution 79-0003 adopted by the San Francisco Airports Commission on January 16. I have very carefully reviewed that resolution and considered it in the light of your letter of January 18. I am also in receipt of a letter to you from Mr. Bakes, General Counsel, Civil Aeronautics Board, dated February 13, 1979.

Both the resolution and your letter recognize that the exclusion of authorized carriers would thwart the policy of the Airline Deregulation Act of 1978 (P.L. 95-504) which was enacted specifically to encourage the entry of air carriers into additional air transportation markets. Resolution 79-0003 does seek to impose specific requirements on air carriers not now operating at San Francisco International Airport which requirements are not imposed on air carriers presently operating there. These additional requirements include a public hearing on the new air carrier's operating plan indicating times, routes and frequency of all proposed flights. There is also a requirement that new air carriers would be required to utilize only those aircraft in their fleet which are certificated as meeting Federal Aviation Regulation Part 36 noise standards.

While I fully appreciate the concerns that underlie Resolution 79-0003, my first observation is that air carriers now operating at San Francisco are not subject to the same requirements as new entrants. Air carriers now operating at San Francisco have in their fleet and utilize on a regular, if not daily, basis aircraft which do not meet the noise standards of Part 36. Similarly I am not aware of any requirement imposed on air carriers presently operating at San Francisco to submit an operating plan to the Airport Commission which would be considered at a public hearing detailing the times, routes and frequency of all proposed

MAR 5 '79

flights whenever they initiate a schedule change, change equipment, increase the frequency of service on an existing route, or provide service on a new route.

I am certain you are aware of the written assurances provided to the FAA on behalf of the United States by the San Francisco Airports Commission contained in executed grant agreements under the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1701, et. seq.) These include the statutorily required assurances that the airport will be operated and available for the use and benefit of the public on fair and reasonable terms, without unjust discrimination, and will be open to all types, kinds and classes of aeronautical use subject to nondiscriminatory and substantially comparable rules, regulations and conditions. [see 49 U.S.C. 1718(a)(1)]

Resolution 79-0003 is, in my opinion, unjustly discriminatory in that it subjects air carriers not now operating at San Francisco International but who wish to operate there under the policies established by the Airline Deregulation Act of 1978 to rules, regulations and conditions which are not substantially comparable to those applicable to air carriers presently operating there. The rationale and basis given for this difference in treatment is the land use study currently in progress. While I recognize the possibility that the addition of new carriers at San Francisco International could impact that study, that possibility is not a sufficient basis for this difference in treatment, and it does not support the unjustly discriminatory treatment proposed by this resolution.

I am also concerned that Resolution 79-0003 may be inconsistent or in conflict with existing Federal regulations. As you know FAA has adopted regulations requiring all aircraft operating in domestic service to meet the noise standards of Part 36. [see 14 CFR Part 91 subpart E, section 91.301 et seq.] Resolution 79-0003 may have the effect of accelerating the time provided by those Federal regulations for air carriers to bring their fleets into compliance with those noise standards. To the extent this result may occur the resolution would be inconsistent and indeed in conflict with the existing Federal regulation.

I do not think that the economic discussion set forth in Mr. Bakes' letter needs repeating but I certainly do find merit in his observation that the approach chosen by the San Francisco Airport Commission may run counter to sound

Appendix F

AIRPORTS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO
DIANNE FEINSTEIN MAYOR

SAN FRANCISCO INTERNATIONAL AIRPORT
SAN FRANCISCO, CALIFORNIA 94128
(415) 761-0800

RUTH S KADISH
PRESIDENT
MORRIS BERNSTEIN
VICE PRESIDENT
WILLIAM K COBLENTZ
DR Z L GOOSBY
J EDWARD FLEISHELL

RICHARD R HEATH
DIRECTOR OF AIRPORTS

March 21, 1979

Mr. Clark H. Onstad
Chief Counsel
Federal Aviation Administration
800 Independence Ave., S. W.
Washington, D. C 20590

Dear Mr. Onstad:

The San Francisco Airports Commission has reviewed your letter of March 2, 1979 concerning the Commission's Interim Policy on new carriers, along with a letter from Mr. Philip Bakes, General Counsel of the Civil Aeronautics Board, dated February 13, 1979.

At its meeting yesterday afternoon, the Commission requested that I respond to your letter. The Commission stands ready to cooperate in developing a policy that is both legal and effective in dealing with the noise problems at San Francisco Airport. However, the Federal Aviation Administration and the Civil Aeronautics Board must both be aware of the fact that this Airport has a very serious noise problem and positive action is necessary to deal with it.

The federal agencies must also be aware that this Airport is governed by the California Noise Law which mandates the maintenance of a Community Noise Equivalent Level (CNEL) below certain decibel limits in one hundred percent of the residential areas surrounding the Airport. The present mandated level is 75 decibels and this Airport is in compliance, although just barely. The decibel level drops to 70 on January 1, 1981.

Projections made by noise consultants as part of the Land Use Study now under way clearly indicate that we will not be in compliance

with the 70 decibel level unless certain very stringent measures are placed in operation in the very near future. The addition of noisy aircraft to our "fleet" could well cause our CNEL level to exceed the 75db level now in effect.

The Federal Aviation Administration has reinforced the requirements of the California Noise Law by specifying, as a condition attached to our ADAP 8 Grant Agreement, that the Airport must take all appropriate measures to assure continued compliance through 1980 and to remain in compliance with the 1981 CNEL level of 70db.

The Joint Land Use Study now under way is evaluating a wide range of alternative long-range actions which the Airport might take. Each of these actions is being evaluated in relation to its affect on our noise impact as measured by the CNEL level and evaluated in terms of its operational or safety implications. The Study, however, cannot possibly be completed before the end of this calendar year. In the interim, the influx of numerous additional air carriers, utilizing noisy aircraft, will compound enormously the problem of predicting mitigation effects and taking effective action to comply with the State Law and with FAA requirements. This factor was, of course, the overriding consideration which caused the Commission to adopt the Interim Policy which is now in dispute.

I would call your attention to the fact that the policy is an interim, not a permanent, policy. It is designed to prevent our noise situation from getting completely out of hand before the Airport is in a position to evaluate the pros and cons of various mitigation measures which might be installed on a permanent basis. Therefore, any alleged "discriminatory" effect on any airline would be of short duration and could hardly be said to be a burden on interstate commerce.

We believe the threatened punitive actions contained in your letter are both premature and unresponsive to various federal policies which you appear to have overlooked. Such actions would be premature because, to date, no airline has been denied the right to operate into and out of San Francisco. All the new carriers which have received CAB authorization and which have presented their case to the Airport have been able to adjust their schedules in order to operate with FAR Part 36 certifiable aircraft. Additionally, the policy is not rigid and unbending. It does allow the Commission to exercise discretion and to be in a position to request certain actions of new carriers which will serve to alleviate the noise problems we have and to prevent their getting out of hand before the Land Use Study is completed.

A good example of the usefulness of the policy occurred yesterday. Alaska Airlines was granted route rights by the CAB between San Francisco and Seattle. In their initial conversations with us, they indicated their plans were to utilize aircraft which are not certified under FAR Part 36. After being informed of our policy and of the severeness of our noise problems, they re-examined their plans and presented to the Commission yesterday an operating plan which will utilize only B727 aircraft which are certified under FAR Part 36. They have not indicated that this requirement is unduly burdensome. Their entry into the San Francisco Airport was duly approved by the Commission.

As you are well aware, the principal means by which we can effectively control noise at this Airport lies in controlling the noise at its source: the airplane. Requiring carriers to utilize, wherever possible, noise-certified aircraft is the most effective measure this Airport can take to solve that problem.

Over a period of many years and in cooperation with the airlines and the FAA, we have adopted a wide range of runway usage and other operational measures to reduce noise. Additional measures in this area are simply not available. We have practically exhausted the supply. The only effective measures left are those which would control the number of operations and which control the type of aircraft being used. Controls on operational frequency have enormous possible economic effects and should not be undertaken without thorough and complete study. This is the task now being undertaken through the Land Use Study.

The Commission and the Airport staff are presently considering comments contained in your letter and Mr. Bakes' letter. We are evaluating possible changes in the Interim Policy to meet the objections raised. Suggestions have been forthcoming from the staff of the Regional Airport Planning Committee of the Metropolitan Transportation Commission and Assocation of Bay Area Governments. These agencies are all sponsored by the federal government, required by federal law, and funded with federal grants. The Commission desires to cooperate with them in developing an effective regional transportation plan. Our legal staff is evaluating the alternatives suggested by the Regional Airport Planning Committee, and I expect to have that evaluation completed within 30 days. We will, of course, solicit comments from both the FAA and the CAB on alternatives which appear to be both legal and effective. I would reiterate, however, that punitive actions by the federal government would be grossly premature at this time.

The Airports Commission finds itself in a position which increasingly plagues local governments. It almost appears that there is

a deliberate strategy on the part of the federal government to adopt a wide variety of policies covering the entire range of possibilities. Federal agencies are then free to pick and choose among the policies they desire to enforce. Local agencies, such as airports, are caught in an intolerable "Catch 22" position. Federal policy requires, for instance, that a regional transportation plan be developed and that all federal grants be reviewed as part of that planning process. The policy is designed to promote regional transportation planning. MTC has developed such a plan for the Bay Area. It is our very strong feeling that the Interim Policy is directly responsive to that Regional Transportation Plan. This fact is confirmed by the letter, dated March 14, 1979, addressed to Mr. Bakes from John Evans, the legal counsel for the Metropolitan Transportation Commission, to which is attached the resolution of the Regional Airport Planning Committee supporting the Commission's Interim Policy. Of what use is a federal policy which requires a regional transportation plan but preempts authority to implement that plan?

Federal policies and Congressional action strongly support land use studies, such as the one which is being conducted at San Francisco. Over 400,000 federal dollars are committed to this project. The Interim Policy is clearly designed to support that effort and to make it successful. Intervention by the federal government at this time would be highly destructive and inappropriate.

As previously stated, the FAA has required that this Airport take all necessary actions to remain in compliance with the California Noise Law. Can the FAA make such a requirement on the one hand and, on the other, state that the Airports Commission does not have the expertise, the knowledge of the local situation and the ability to determine what actions are, indeed, appropriate?

It has long been federal policy that the local airport proprietor is "responsible" for controlling the noise at an airport. That policy is based upon the conception that the local proprietor is best able to determine the proper mitigation measures to accomplish that end.

The Aviation Noise Abatement Policy dated November 18, 1976 contains the following statements:

> Page 5: 'Airport Proprietors are primarily responsible for planning and implementing action designed to reduce the effect of noise on residents of the surrounding area. Such actions include optional site location, improvements in airport

design, noise abatement ground procedures, land acquisition, and restrictions on airport use that do not unjustly discriminate against any user, impede the federal interest in safety and management of the air navigation system, or unreasonably interfere with interstate or foreign commerce."

Page 6: "State and Local Governments and Planning Agencies must provide for land use planning and development, zoning, and housing regulation that will limit the uses of land near airports to purposes compatible with airport operations."

Page 9: "Airport Noise Policy

To bring about further relief from excessive aircraft noise, airport proprietors are encouraged to develop aggressive noise abatement programs for their airports .... "

Page 10: "The FAA will encourage airport proprietors, who are legally responsible for the effect of aircraft noise on the surrounding community, to assess their particular noise problem and, where local authorities determine that there is a significant problem, to develop an action plan to reduce the impact of noise."

It does, indeed, seem ironic that the San Francisco Airport proprietor, having intimate knowledge of the City of San Francisco, having intimate knowledge of the mood of the residents around San Francisco, having intimate knowledge of developments in the California Courts which have held an airport may be treated as a public nuisance and subjected to damages for personal injury as a result of airport noise, having duly considered the problem in all its aspects, and having determined that the Interim Noise Policy is absolutely necessary to accomplish the purposes and responsibilities placed on it by federal law is preemptorily told by a Washington agency that that action is illegal and may subject the airport to punitive damages.

The CAB has traditionally treated the Bay Area as a single market and has certified routes into and out of this area on a hypenated basis: San Francisco/Oakland/San Jose. The CAB, in its Oakland

Service Case, has made a tentative finding, which will most certainly be confirmed by the Board, of an imbalance of air carrier service in the Bay Area and of an "under-served" condition at the Oakland Airport and of a need to encourage more traffic at the Oakland Airport and less at San Francisco. The announced policy in the Oakland Service Case is found consistent with the Regional Transportation Plan developed by the Metropolitan Transportation Commission. The San Francisco Airports Commission's Interim Policy on new carriers is in complete accord with those policies and is not discriminatory. It has not and will not bar new carriers from serving the Bay Area market. It simply places a condition upon new carriers who desire to serve that market from the San Francisco side of the Bay. If those carriers cannot meet these requirements, they may still serve the Bay Area from runways located on the East side of the San Francisco Bay at an airport which the CAB has found is very convenient to downtown San Francisco.

Clearly, the FAA policy of banning certain aircraft during nighttime hours at National Airport "discriminates" against air carriers who do not have airplanes in their fleet meeting the very restrictive noise requirements contained in that policy. Clearly, that policy is "discriminatory" in favor of air carriers whose fleets contain those less noisy aircraft. Clearly, that policy would constitute an unreasonable burden on interstate commerce were it not for Dulles and Baltimore Airports being available for the use of noisy aircraft. That same reasoning is certainly true in the Bay Area. Your letter seems to have totally ignored the fact that this area is a multi-airport area and is covered by a Regional Transportation Plan.

As stated at the outset, the Airports Commission does not desire a confrontation with the federal government on this issue. We do request direct consultation and discussions so that those of you in Washington who are unfamiliar with the local scene may understand the full implications of any federal actions before such actions are precipitously commenced.

Yours truly,

Richard R. Heath
Director of Airports

cc: Mr. Philip J. Bakes, Jr.
Mr. Langhorne Bond
Mayor Dianne Feinstein
Members, Airports Commission

bcc: Senior Staff
Noise Policy Group
San Mateo Policy Group
Members, Joint Powers B
Chris Brittle, MTC
File

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Appendix G

Metropolitan Transportation Commission

March 14, 1979
W.I.: 1201-01-01

Mr. Philip J. Bakes, Jr.
Legal Counsel
Civil Aeronautics Board
Washington, D.C. 20428

Dear Mr. Bakes:

In a letter dated February 17, 1979, the Civil Aeronautics Board challenged the legality of Resolution No. 79-003 of the San Francisco Airports Commission. This resolution provided an interim policy for entry of new air carriers at San Francisco International Airport. The position taken by the CAB raises several major issues which have far-ranging impacts not only on the operation of San Francisco Airport but, also, on the development and operation of other airports in the San Francisco Bay Area.

The Regional Airport Planning Committee, a joint committee of the Association of Bay Area Governments and the Metropolitan Transportation Commission, is concerned that the CAB position could undermine the development of a balanced regional airport system that is responsive to the public's need for more convenient airline service, lower airport noise and air pollution levels. Since the Regional Airport Planning Committee had adopted a similar resolution (attached), we request clarification of several points raised by the CAB in order that local and regional policies can be more effectively applied in the new regulatory environment.

The CAB letter cited three factors for considering whether the San Francisco Airports Commission's policy relating to new air carriers at San Francisco Airport is unduly restrictive: (1) -Is the policy discriminatory? (2) Is the policy unduly burdensome on interstate commerce? and (3) Is the San Francisco Airport preempting regulatory authority given to the CAB?

3. Does the Policy Preempt CAB Regulatory Authority?

With respect to the third point, the CAB has misjudged the intent of the San Francisco Airports Commission resolution to "take appropriate actions to support the goals of the Airport Element of the Regional Transportation Plan." While San Francisco Airport clearly cannot regulate routes, fares or schedules of airlines, it can support the goals of the regional plan by encouraging air carriers to use other Bay Area airports. The regional airport plan adopted by the Metropolitan Transportation Commission and Association

MAR 19 '79

of Bay Area Governments recommends a redistribution of future airline traffic among San Francisco, Oakland and San Jose airports in order to maximize runway and airspace and air safety -- and to minimize airport noise and air pollution. This plan was developed with substantial financial support from the FAA and has been adopted after numerous public hearings.

The fact that the Bay Area is a multiple airport hub is a fundamental point which appears to have been overlooked in the CAB response. If Bay Area air travelers are to receive "a convenient level of air transportation service," the Bay Area airports must operate as a system the same way Dulles and National are operated. Section 3a, Item (6) of the Airline Deregulation Act of 1978 emphasizes the "... encouragement of air service at major urban areas through secondary or satellite airports where consistent with regional airport plans of regional and local authorities ...". Further, the CAB has concurred with the need for new and improved service at Oakland Airport by instituting the Oakland Service Case (Docket 30699).

Therefore, the basic policy of the CAB with respect to this point in the San Francisco Resolution should be one of support for the direction the Airports Commission has taken.

2. Is the Policy Unduly Burdensome on Interstate Commerce?

The CAB's primary concern is with the proposed treatment of new carriers versus the treatment of incumbent carriers. Since the CAB has historically granted route authority to the Bay Area on a hyphenated or co-terminal basis, the CAB itself recognizes the equivalency of Bay Area airports in serving airline requirements. Given this traditional approach to providing airline service to the Bay Area, it is difficult to argue that any restrictions at San Francisco Airport limit overall airline access to the Bay Area. Such services could also be provided at Oakland and San Jose airports. Carriers lawfully departing from Chicago, New York or Denver, therefore, would still be able to land in the Bay Area. Thus the proposed policy of San Francisco Airport, encouraging carriers to use other airports as advocated in the regional plan, would not prove to be a burden for new air carriers with respect to entry into the Bay Area.

1. Does the Policy Discriminate Against New Carriers?

The CAB further argues that the requirement for new carriers to use Part 36 equipment places "substantial and insurmountable burdens on entering airlines which incumbent airlines do not bear...." While this may be true for San Francisco Airport, it is not true for the Bay Area as a whole. Because of existing activity levels and geographic locations, other Bay Area airports have a higher noise capacity for increased levels

of operations. For example, regional policies allow an increase in noise level around Oakland Airport until such time as these levels approach the noise associated with the traffic allocation in the regional airport plan. Oakland Airport, therefore, initially has a higher tolerance to non-Part 36 aircraft than San Francisco Airport where regional policies require the airport to hold noise levels constant and then decrease these levels. It is our opinion that the CAB is not consistent with the guidelines established for the Board to implement the National Environmental Policy Act. In particular, these guidelines state that in its environmental assessment the CAB recognizes the need to review pertinent "local, regional, or state plans and regulations." The content of the CAB letter indicates this has not taken place.

We would also be interested in your response to a policy whereby all carriers (new and incumbent) who wishes to initiate service on a new route would be subject to the same conditions for using Part 36 aircraft. Would such a policy be considered discriminatory?

As a final comment, actual experience in the Bay Area tends to conflict with the concept put forth in the CAB letter -- that the Airline Deregulation Act of 1978 will reduce noise exposure by reducing the number of flights. In calendar year 1978, airline operations at San Francisco Airport increased 5.8% and measured noise levels at most monitor locations around the airport increased 2-3 db.

We would appreciate a response to the comments in this letter at your earliest convenience.

Very truly yours,

John Evans,
Legal Counsel

JE:B:r

Attachment

cc: Richard Heath, Director of Airports,
San Francisco Airport

Clark Onstad
Chief Counsel, FAA

ABAG/MTC
ASSOCIATION OF BAY AREA GOVERNMENTS / Metropolitan Transportation Commission

REGIONAL AIRPORT PLANNING COMMITTEE

February 23, 1979
W.I.: 1201-01-01

RE: Interim Regional Policy Concerning New Airline Service in the San Francisco Bay Area Resulting from the Airline Deregulation Act of 1978

RESOLUTION 79-1

WHEREAS, the Regional Airport Planning Committee, a joint Committee of the Association of Bay Area Governments and the Metropolitan Transportation Commission, is responsible for preparing and updating the Airport Element of the Regional Transportation Plan for the San Francisco Bay Area; and

WHEREAS, the Federal Airline Deregulation Act of 1978 could have a significant impact on the adopted policies of the Regional Transportation Plan pertaining to the development of a safe, convenient and environmentally sound air transportation system; and

WHEREAS, the Committee is particularly concerned with the near-term adverse environmental impacts which will occur at the Bay Area airports as a direct result of the increased levels of airline service afforded by the Act; and

WHEREAS, the Regional Transportation Plan has demonstrated that environmental impacts of growing air traffic volumes can be minimized by dispersing traffic from San Francisco Airport to other

Bay Area airports; and

WHEREAS, the San Francisco Airports Commission and the City of San Jose are engaged in studies to plan future airport facilities and to determine methods by which the adverse environmental impacts of increasing airport activity on surrounding communities will be minimized;

NOW, THEREFORE, BE IT

RESOLVED, that the ABAG/MTC Regional Airport Planning Committee encourages all air carriers not presently certificated to serve the San Francisco Bay Area and who may wish to do so under the provisions of the Act, to give the highest priority to providing such service at Oakland Airport; and be it further

RESOLVED, that the ABAG/MTC Regional Airport Planning Committee encourages all air carriers who are already certificated to serve the San Francisco Bay Area but who may wish to apply for routes already served by one or more air carriers at San Francisco Airport, to give the highest priority to providing such service at Oakland Airport; and be it further

RESOLVED, that this policy shall be reviewed upon completion of the San Francisco/San Mateo Joint Land Use Study, the San Jose Economic and Planning Management Program and the Regional Airport Plan Update Program.

Approved by RAPC,
February 23, 1979

Appendix H

CIVIL AERONAUTICS BOARD
WASHINGTON, D.C. 20428 IN REPLY REFER TO:

April 3, 1979

Mr. John Evans
Legal Counsel
Metropolitan Transportation Commission
Hotel Claremont
Berkeley, California 94705

Dear Mr. Evans:

Your letter of March 14, 1979 does not meet the points I made to Mr. Heath. The fact of the matter is that the Commission's resolution places substantial burdens on entering airlines at San Francisco International Airport which incumbent airlines do not bear, and it therefore puts new entrants at a disadvantage in seeking to compete in the San Francisco area market. At the same time, the resolution protects incumbent airlines at that airport from the competitive pressure which the possibility of new entry at the same airport places on pricing and scheduling decisions. This squarely conflicts with the letter and spirit of the Airline Deregulation Act of 1978. And, since incumbent airlines are free to increase operations and use non-FAR 36 aircraft, the means chosen (restrict new airlines) do not appear reasonably related to the end sought (restrict noise and pollution around San Francisco International Airport), thus casting additional doubt in my mind on the validity of the resolution as an exercise of proprietary rights.

The fact that the Board has treated area airports as co-terminals supports rather than conflicts with the idea that carriers should be unrestricted and treated equally in their selection of airports. The Board's co-terminal treatment of area airports cannot be taken as support for a local enactment giving incumbent carriers the preferential use of a particular airport.

The Board shares your concern about reducing noise, congestion and pollution at San Francisco Airport by encouraging the use of other Bay area airports. It was this concern that led the Board to institute the

Oakland Service Case that could lead to awards of additional authority between Oakland and Albuquerque, Atlanta, Boston, Chicago, Dallas/Ft. Worth, Denver, Detroit, Houston, Kansas City, Minneapolis/St. Paul, Philadelphia, Phoenix, Portland, Salt Lake City, and Seattle/Tacoma. The Board recognized that the Oakland airport has fine facilities but that incumbent carriers were not making optimal use of those facilities or tapping the East Bay area's potential traffic demand. The Board found that the cause of Oakland's small share of area traffic was the poor service offered by the incumbents. To provide the opportunity for the most rapid possible improvements in Oakland service, the Board tentatively concluded: that there should be additional nonstop awards in Oakland markets already receiving nonstop service where such service is not meeting Oakland's full traffic potential; that there should be new nonstop authority granted in every Oakland market in which forecast traffic in 1979 will be capable of sustaining at least one nonstop trip per day with suitable aircraft; and finally that there should be additional awards in markets already served even if they would not result in any immediate increase in the amount of nonstop service, so that any future deficiencies in service could be remedied promptly and flexibly.

When it appeared that the hearing before the administrative law judge was not progressing as rapidly as expected, the Board invited exemption applications to hasten development of mutually supportive services at Oakland. Braniff, Alaska Airlines and PSA have taken advantage of that invitation. So the Board is strongly committed to new service at Oakland, and we hope that service will encourage a more balanced use of Bay area airports.

But, actions at both the Federal and local levels to encourage use of Oakland must by law operate in a nondiscriminatory manner. You correctly point out that the Federal government manages two Washington area airports and is trying to encourage use at Dulles, the less congested airport. But, you overlook the fact that this policy acts through operating rules which allow new carriers at both airports to perform operations on the same terms and conditions as incumbent airlines. All airlines -- old or new -- can operate identical aircraft at either Dulles or National airport.

Certainly the San Francisco Airport Commission can construct a nondiscriminatory plan to limit operations at San Francisco International Airport which would avoid conflict with Federal policy in the Airline Deregulation Act. Whether an equitable plan to limit San Francisco International operations to FAR 36 aircraft would conflict with Federal

noise rules or unduly burden interstate commerce is a difficult question and is primarily one for the Department of Transportation and the Federal Aviation Administration to answer. I express no opinion on this question. From the CAB's point of view, the fundamental legal problem with the current resolution is not that airline operations at San Francisco International Airport would be restricted, but that they would be restricted in a seriously discriminatory manner.

You asked me to comment on the possibility of restricting all airlines who wish to institute service on a new route to FAR 36 aircraft. This approach, if I understand it correctly, would still allow incumbent airlines to maintain or increase operations at will on existing routes using non-FAR 36 aircraft, but would forbid any non-FAR 36 operations by new carriers on any route or by existing carriers on new routes. I have three observations. First, since existing carriers can increase noisy operations on existing routes, the proposal may not appreciably help the environment, thus raising the legal question of whether the rule is reasonably related to the airport's legitimate proprietary concern with noise control. Second, the proposal applies a much stricter standard to the operations of new carriers than the operations of incumbent carriers. This raises the same legal problems I have with the resolution now in effect, namely, that it is discriminatory and thus illegal under ADAP grant conditions, the Burbank decision and the "exclusive use" provision of section 308(a) of the Federal Aviation Act, 49 U.S.C. §1349(a). Third, since the implementation of the proposal would permit unrestricted operations only on those specific routes now flown out of San Francisco International Airport, it may well be prohibited under Section 105(a)(1) of the Federal Aviation Act, 49 U.S.C. §1305(a)(1), which allows no state or local public agency "to enact or enforce any law, rule, regulation, standard or other provision . . . relating to routes" of Federally authorized airlines.

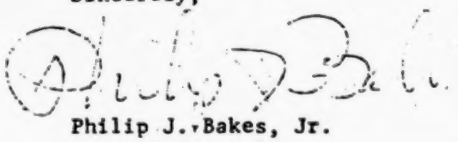
We and the Federal Aviation Administration are willing to take part in discussions of nondiscriminatory ways restricting or allocating operations at San Francisco International Airport. Richard Heath's March 21 letter to Clark Onstad, Chief Counsel of the FAA, proposes such discussions between Federal and Bay area officials. If you wish to participate, we will welcome your ideas and assistance.

Finally, I want to emphasize the point I made in my letter to Mr. Heath on the compatibility of deregulation and environmental protection. My point was not that deregulation will reduce the number of flights,

but rather that competition under conditions of open entry will tend to make airlines operate more efficiently. Thus flights that are operated will operate with more passengers. Put another way, under competition airlines will tend to fill up their seats before they add additional flights. In an environment where price competition is limited -- and this is one effect of the current resolution -- the tendency is for the airlines to engage in frequency competition, which is as detrimental to the environment as increased operations resulting from freedom of entry and lower fares, without providing any cost savings to travellers. I grant you that a full plane is just as noisy as an empty plane, but I'm sure you'll agree that one full flight is environmentally better than two half-empty flights. Although there may have been a moderate increase in operations at San Francisco International, there has been a dramatic increase in the number of passengers -- which tends to prove my point.

Again, I am prepared to help in any way I can in developing a plan consistent with law and Federal policy that meets your important environmental needs.

Sincerely,



Philip J. Bakes, Jr.
General Counsel

Appendix 1

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

WASHINGTON, D.C. 20591

APR 9 1979

Mr. Richard R. Heath
Director of Airports
San Francisco International Airport
San Francisco, California 94126

Dear Mr. Heath:

I appreciate the concerns and arguments set out in your letter of March 21. While I am sympathetic to the legitimate environmental concerns of airport operators and airport neighbors, nevertheless I have a responsibility to point out potential legal problems, particularly when, as in this case you requested that I review the proposed San Francisco International regulations and advise you of FAA's views with respect to those proposals.

Initially let me assure you that FAA will not take precipitous action of any kind, let alone precipitous "punitive" action. When we have the all the facts we will be in a position to decide what, if any, further action is necessary or appropriate. Our advice and comments to you were based on the available information which you provided.

Frankly, your March 21, letter does not alleviate my concerns. The fundamental point of my March 2 letter to you was to point out that the proposed San Francisco policy with respect to new carriers was inherently unjustly discriminatory. It establishes conditions and restrictions applicable only to new operators at SFO while existing operators are not so constrained. The Aviation Noise Abatement Policy and every other relevant document supports the principal that unjustly discriminatory action is unacceptable.

As I stated in my earlier letter, the FAA and the City of San Francisco have worked cooperatively and effectively in the past and I hope will be able to do so in the future. We are prepared to work with you in this area. Confrontation or engaging in invective is not, in my view, a reasonable basis for resolving problems. I am prepared to meet with

APR 12 '79

you and other appropriate Bay Area officials to discuss these issues in more detail. In this connection, I called your office yesterday to try to set up an appointment on Monday, April 9, 1979, unfortunately you were on vacation.

I feel certain that a nondiscriminatory mechanism can be developed and implemented at San Francisco International. I look forward to hearing from you at your earliest convenience in order that we can get together at a mutually agreeable time and place. In closing, I feel some urgency in this matter as I am deeply troubled by the precedential nature as well as the chilling effect of the San Francisco action upon particular new entrants.

Sincerely,

Clark H. Onstad
Chief Counsel

Appendix J

CIVIL AERONAUTICS BOARD
WASHINGTON, D.C. 20428

MAY 15 1979

IN REPLY REFER TO

Mr. William E. Siri
President, Save San Francisco
Bay Association
P.O. Box 925
Berkeley, California 94701

Dear Mr. Siri:

Thank you for your letter of April 19 asking me to reconsider the position taken by the Board's General Counsel, Philip Bakes, in a February 13, letter to Richard Heath that Resolution #79-0003 of the San Francisco Airport Commission is unlawful. Mr. Bakes' position has the full support of the Board and was developed in consultation with me. In my view, it is the only position that can properly be taken in light of federal law. So that you will be clear on our position, I am enclosing copies of a series of letters on this point.

I am sorry you have the misimpression that the CAB is ignoring the serious environmental problems you face in the Bay Area. We are in fact quite sensitive to them. I enclose a letter from Phil Bakes to Mr. Evans that details our efforts to encourage use of the Oakland Airport. We are not particularly receptive to apparent "solutions" that do not materially improve environmental conditions and substantially undermine important federal policies. We are very eager to develop effective environmental protections that are consistent with federal policies.

Resolution #79-0003 placed severe restrictions on new entrants at San Francisco International Airport, but left the many existing airlines completely free to increase their operations. There may be some surface public appeal to placing some cap, any cap, on operations. But the public will not be satisfied -- nor will the environment be improved -- with a solution that just doesn't do the job it was meant to do. The noise and air pollution created by existing airlines is no less objectionable than that created by new entrants, yet the Resolution would not restrict the operations of existing airlines by fencing out only new entrants, and making special exceptions for existing airlines. Furthermore, the Resolution eliminates the single most powerful force to stimulating price competition which in turn

encourages the efficient use of fuel, aircraft and other scarce resources. We at the CAB have first hand experience to show that limiting entry reduces incentives to operate efficiently. Competitive conditions, on the other hand, encourage lower fares and more efficient operations. And, as I'm sure you realize, the efficient use of resources is a primary factor in improving the environment. By encouraging carriers to operate their planes with higher load factors, the amount of noise, pollution and fuel per passenger is reduced. We are convinced that environmental protection is consistent with competitively induced efficiencies. We have no objection to restricting operations at San Francisco International Airport to fulfill environmental goals. But any restrictions must not be selective and unjustly discriminate against one small class of companies while favoring a much larger class.

We very much want to work with local officials to develop a plan that, unlike Resolution 79-0003, is effective in protecting the environment and compatible with federal policies. We and the FAA are working on this problem and along with Mr. Heath are exploring lawful and effective solutions. It will require ingenuity and flexibility to succeed, but the effort will be well worth it.

Sincerely,

(Signed) Marvin S. Cohen

Marvin S. Cohen
Chairman

Enclosures

cc: Mrs. Dean Watkins, BCDC
Mr. George Reed, BCDC
Ms. Susan Smith
Mr. John Evans, MTC
Mr. Dennis Heath, SF Airport
Mr. Revan Tranter, ABAG
Ms. Paula Carrell, Sierra Club

Appendix K

AIRPORTS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO
DIANNE FEINSTEIN MAYOR

SAN FRANCISCO INTERNATIONAL AIRPORT
SAN FRANCISCO, CALIFORNIA 94128
(415) 761-0800

RUTH S KADISH
PRESIDENT
MORRIS BERNSTEIN
VICE-PRESIDENT
WILLIAM K COBLENTZ
DR Z L GOOSBY
J EDWARD FLEISHELL

RICHARD R HEATH
DIRECTOR OF AIRPORTS

MEMORANDUM

September 25, 1979

TO: MEMBERS, AIRPORTS COMMISSION
Hon. Morris Bernstein, President
Hon. William K. Coblentz, Vice President
Hon. Ruth S. Kadish
Hon. Z. L. Goosby
Hon. J. Edward Fleishell

FROM: Director of Airports

SUBJECT: Interim Noise Policy

In response to our request, we have received replies from most of the airlines concerning the Interim Noise Policy. The replies are highly inconsistent. An investigation revealed that the inconsistency resulted from a substantial error made by the FAA in the publication of their 36-3 Circular.

In describing the particular aircraft involved, the FAA mistakenly added certain descriptive material, such as "engines equipped with P36 accoustical treatment", to the descriptions for DC-8's, 707's, 727's and 737's. P-36 accoustical treatment is only applicable to DC-9 type of aircraft. Consequently, some airlines, in good faith, reported the DC-8's and 707's in their fleet ignoring the "P-36 accoustical treatment" description, while others, in good faith, reported their fleet utilizing that modifying phrase.

Additionally, we have discovered that there are a substantial number of aircraft in the fleets of the airlines operating at San Francisco which are not described in the FAA's 36-3 Circular. We were informed by the FAA that that Circular described all of the aircraft operating in the United States at this time and ranked them accurately in terms of noise produced under certain conditions.

The facts we have uncovered clearly demonstrate that the descriptions of most of the aircraft involved in our proposed Interim Noise rule is incorrect. Consequently, the reports from the airlines are inconsistent and unreliable. If the descriptions of the aircraft in Circular 36-3 were utilized as the basis for a noise policy, it would have no effect since every airline could validly report that they have no aircraft in their fleet which are described by Circular 36-3 above the 102 decibel line.

I discussed this matter with the General Counsel for the FAA, who referred us to an FAA official, Mr. Wesler, who admitted to Arn Feener that these errors and omissions were correct. Mr. Wesler stated that the FAA was going to issue and new and correct circular. He offered to provide us data for those aircraft which are not listed in the circular, which he assured us would be accurate. However, I do not believe that we can conscientiously base a policy upon an admitted inaccurate circular or upon the unofficial response of one FAA official.

I personally feel a terrible sense of frustration over this whole matter. This Commission, in good faith, adopted an Interim Noise rule to protect the surrounding communities against an onslaught of noise which might have resulted from deregulation. The FAA declared that rule illegal and requested the Commission to rescind it. The FAA also urged us to adopt a new rule, based upon that 36-3 Circular. Now it turns out that that Circular is inaccurate and fails to list many of the aircraft now operating at San Francisco. It is, therefore, impossible to predict the effect of any Interim Policy based upon such a document.

This Airport is committed to do everything in its power to maintain itself in compliance with the State Noise Law without a variance, at least through January 1, 1981. This is a condition we agreed to as part of an ADAP grant. There is no question that the noise level at the Airport is increasing rather than diminishing. We are barely in compliance in the communities that make up "the Gap". Positive action must be taken in order to remain in compliance. However, we must have accurate data in order to take such positive action.

My recommendation is that this Commission demand assistance from the General Counsel's office of the FAA, demand that a knowledgeable and competent individual be assigned to this Airport immediately to work with

Arn Feener, Walt Gillfillan and the Consultants to the Joint Land Use Study. The objective of this effort would be to develop as quickly as possible noise mitigation measures which could be adopted and immediately implemented which will retain this Airport in compliance with the State Noise Law at least through 1980 without a variance. I recommend that such measures be developed so that the Commission may adopt them no later than their first meeting in December.

An appropriate resolution is attached for your consideration.

RICHARD R. HEATH

attachment

Appendix L

AIRPORTS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO
DIANNE FEINSTEIN MAYOR

SAN FRANCISCO INTERNATIONAL AIRPORT
SAN FRANCISCO, CALIFORNIA 94128
(415) 761-0800

MORRIS BERNSTEIN
PRESIDENT
WILLIAM K. COBLENTZ
VICE-PRESIDENT
RUTH S. KADISH
DR. Z. L. GOOSBY
J. EDWARD FLEISHELL

RICHARD R. HEATH
DIRECTOR OF AIRPORTS

October 5, 1979

Mr. Clark H. Onstad
Chief Counsel
Federal Aviation Administration
800 Independence Ave., S. W.
Washington, D. C. 20590

Dear Clark:

I am enclosing a copy of my memorandum to the Airports Commission of September 25, 1979, to which is attached a resolution which was presented to the Commission at the October 2 meeting and passed unanimously.

As I assume you are aware by now, our conversations with Mr. Wesler confirmed the airlines' contentions that FAA Circular 36-3 contained substantial errors in describing aircraft and also substantial omissions in certain aircraft models and configurations which are utilized at this Airport. Had we adopted, for instance, a policy of eliminating all aircraft above the 102 take-off decibel line, the effect would have been zero, since no such aircraft exist in the domestic fleets as described in that Circular.

The communities around the Airport are, rather predictably, upset over this situation and it becomes even more imperative that we move forward quickly in the development of a policy which will have some effect on reducing noise at the Airport.

I would appreciate your immediate attention to this matter and ask that the FAA immediately assign a high-level technician to work intensively with us in the development of a policy which will meet the requirements of the attached resolution.

Your cooperation will be greatly appreciated.

Yours truly,

Richard R. Heath
Director of Airports

RH:dp
cc: Hon. John L. Burton
Members, Airports Commission
Walt Gillfillan
Senior Staff
File

enclosures

Appendix M

Air Transport Association OF AMERICA

1709 New York Avenue, N.W.
Washington, D. C. 20006
Phone (202) 872-4000

CLIFTON F. VON KANN
Senior Vice President
Operations and Airports

October 9, 1979

The Honorable Langhorne M. Bond
Administrator
Federal Aviation Administration
Washington, D. C. 20591

Dear Langhorne:

FAA recently published Advisory Circular 36-3, "Estimated Airplane Noise Levels in A-Weighted Decibels." This Advisory Circular was apparently issued because "both present and future rulemaking activities require knowledge of the noise levels of airplanes that may be operated in the United States."

You may be aware that the San Francisco Director of Airports recently proposed adoption of a noise regulation reading in part, "All aircraft which exceed an estimated A-weighted decibel (dBA) certificated noise level of x on takeoff, as listed in Department of Transportation, Federal Aviation Administration Advisory Circular, 36-3, dated May 29, 1979, may not operate at San Francisco International Airport." We are now faced with a situation where the Airports Commission of a major airport, serving important domestic and international markets, may decide to ban aircraft types based on the listings attached to the Advisory Circular.

Advisory Circular 36-3 was never coordinated with the airlines prior to its publication. Inquiry also indicates it was never reviewed by major airframe manufacturers, who may have serious reservations about the use of their noise level estimates in the manner contemplated by FAA when preparing the Advisory Circular for publication. We understand the listings attached to the Circular were prepared by a consultant, with some doubt that the consultant understood its intended use. Our preliminary review of the Advisory Circular listings indicates that they are riddled with errors, based on technically questionable assumptions and clearly

unsuitable as a basis for banning aircraft from operation at an airport. Attachment A lists some of our detailed objections and questions. Furthermore, we believe FAA has failed to adequately consider some important policy questions in encouraging the regulatory approach being pursued in San Francisco and implicitly in the Advisory Circular:

- The noise levels listed in the Advisory Circular bear no direct relationship to the noise levels that will be experienced in any community;

- Implementation of differing permissible noise levels at a number of airports - possibly even differing levels for each of several runways at one airport - is likely to lead to chaos in the national air transport system as specific airplane types are banned from serving the city pairs for which they are operationally and economically best suited;

- Outright banning of aircraft types from an airport as a noise control measure is inconsistent with the more comprehensive, community-related approach being advocated by FAA in the Airport Noise Control and Land Use Compatibility (ANCLUC) Study process;

- The Advisory Circular listings tend to discriminate against heavy, long range airplanes whereas the FAR 36 regulatory philosophy accounts for gross weight and number of engines;

- The Advisory Circular listings tend to discriminate against some of the most fuel efficient airplanes operated by the airlines such as the B-747. These airplanes are likely to be heavy and thus relatively more noisy than lighter airplanes, given the same level of noise technology in the airplanes being compared;

- The ultimate effect of using Advisory Circular 36-3 as a means of restricting aircraft operations may be to encourage (or force) the carriers to obtain the

lightest aircraft possible to provide planned air service. This may occur in view of the fact that if all aircraft incorporate the same level of noise control technology, the lighter the aircraft the lower the Part 36 value. In general, the lowest cost, most fuel efficient aircraft are the heaviest aircraft. Therefore, the use of a noise level rating as a means of restricting aircraft appears to conflict with two important goals, i.e., low cost transportation and reduced energy consumption. This effect is magnified if the takeoff table of Advisory Circular 36-3 is used to impose the airport access limitation.

We request that you immediately withdraw or cancel Advisory Circular 36-3. This Advisory Circular is technically indefensible. We also request that FAA reconsider the policy approach that has resulted in publication of the Advisory Circular. In our view a more careful review of the facts and their implications is in order.

ATA is prepared to assist in any review you might decide upon. We believe the expertise of the major airframe and engine manufacturers should also be utilized by FAA.

Sincerely,

Clifton F. von Kann

Attachment

cc: Mr. Clark H. Onstad
Mr. Leonard A. Ceruzzi
Mr. John E. Wesler
Mr. James E. Densmore

bcc: J. V. McGinn
ATA Regional Offices
ATA Noise Working Group
K. R. Whitehead - UA/ENO
W. E. Ryan - UA/SFO
Carl Swartz - FT
A. C. Ford - DL/ATL
Ralph Dau
Henry Hill
Lyman Tondel
R. E. Russell - Boeing
A. L. McPike - Douglas
N. Shapiro - Lockheed

JRF:lbh

Attachment A

Problems with Advisory Circular 36-3

1. The Advisory Circular introductory material admits that all of the values listed are only estimates. None of the values listed in A.C. 36-3 were obtained directly from test programs. Values listed for certificated airplanes were derived from EPNL, which is in turn a calculated value. Since there is no unique and universally applicable relationship between EPNL and A-weighted sound level, each noise level value - even for certificated airplanes - had to be obtained by some estimating procedure. Since the procedure used has not been published, there is no way that an independent verification can be made of the accuracy of the EPNL - dBA conversion.

2. Acoustic experts retained by an ATA member airline advise that the accuracy of the sound levels for certificated airplanes powered by high bypass ratio engines appears to range from ± 1 to ± 3 dB depending on measurement point - takeoff, sideline, or approach. For certificated aircraft powered by low bypass ratio engines the accuracy of the data appears to vary between ± 1 to ± 5 dB, depending on measurement point. Accuracy of sound levels for airplanes not noise certificated appears to be in the range of ± 5 dB, and may be as high as ± 10 dB.

   For the DC-8-61 (one of the non-noise-certificated airplanes in A.C. 36-3); there is some direct evidence[1/] to indicate that the noise levels shown in A.C. 36-3 are not correct. At the takeoff point, A.C. 36-3 shows that the estimated maximum sound level is 105.2 dB while Ref. 1 would indicate that it probably should be between 100 and 102 dB. The indicated level of 92.7 dB on the sideline probably should be closer to 95 dB according to Ref. 1. The estimated value of 106.8 dB for approach should be more like 102 to 104 dB according to Ref. 1. These discrepancies support the earlier statement that the general accuracy of the noise levels estimated for non-noise-certificated aircraft is probably about ± 5 dB.

   Additional evidence to support a belief that the values listed for the DC-8-61 airplane are wrong is provided by a comparison with the values listed for the DC-8-63 airplane with JT3D-7 engines at a maximum takeoff gross weight of 355,000 lbs. A.C. 36-3 lists the following values:

1/ R. E. deLapp: Aircraft Noise Definition Phase II -- Analysis of Flyover Noise Data for DC-8-61 Aircraft. FAA Contractor Report FAA-EQ-74-5, August 1974

Airplane	Sound level, dB Takeoff	Sideline	Approach
DC-8-61	105.2	92.7	106.8
DC-8-63	101.2	92.7	103.8

None of the above comparisons is likely to be correct. For takeoff, there is no reason to expect the DC-8-61 (powered by JT3D-3B engines rated at 18,000 lbs. of static thrust and with a 328,000 lbs. maximum takeoff gross weight) to be 4 dB noisier than the DC-8-63 which is powered by engines having a 19,000 lb. thrust rating and which has 27,000 lbs. more takeoff weight. For the sideline condition which is nearly independent of differences in the aerodynamic performance capabilities of the aircraft, one would expect that the DC-8-63 would be somewhat noisier than the DC-8-61, although the long fan-exhaust duct on the JT3D-7 engines for the DC-8-63 may yield some reduction in jet noise relative to that produced by the shorter fan-exhaust ducts used on the JT3D-3B engines for the DC-8-61. For the approach condition, there is again no reason why the DC-8-61 should be 3 dB noisier than the DC-8-63 which is probably landing at a higher weight than the DC-8-61.

3. A preliminary review of the takeoff data by airframe manufacturers indicates apparent errors, for both certificated and non-certificated airplanes. For example, the following entries appear to be in error (more likely estimates are listed in parentheses):

B707-320B	JT3D-3B	328,000	100.8 dBA (97.5)
B747SP	JT9D-7F wet	695,000	96.2 dBA (93.5)
B747SP	JT9D-7A	660,000	94.9 dBA (92.0)

4. The fact that there is much confusion in the data is illustrated by the notes. Note 1 indicates P.36 (Part 36) acoustical treatment on many aircraft which have no such treatment. Note 8 indicates thrust cutback used. Yet the note is missing from listings for several aircraft which have obviously used thrust cutback.

5. It appears Annex 16 data are mixed in with Part 36 data, which is probably inequitable to U.S. manufactured aircraft. Annex 16 permits greater cutbacks for many aircraft and utilizes some reference locations further from the aircraft. Furthermore, there appears to be some confusion in the sideline listings concerning the physical location for which estimates are provided. We are uncertain whether

all the values were modified for a location 450 meters from the extended center sideline, or whether some are values for 450 meters, some for .25 nautical mile and some for .35 nautical mile.

6. The potentially large errors in the value of the noise levels listed in A.C. 36-3 could result in substantial changes in the relative ranking of aircraft models if the true noise levels could be ascertained. There are a number of aircraft models ranked within one decibel on each of the three tabulations. For the takeoff listing the average number of aircraft within a one dB increment is about 5, for the sideline listing about 8 aircraft per dB and for approach about 10 aircraft per dB. (The maximum number of aircraft models within a one dB increment ranges up to three times the average value.) Thus, a $\pm$ 5 dB error would result in a shift of about 25 places in the takeoff ranking, about 40 places in the sideline ranking and about 50 places in the approach ranking. Aircraft rankings that are known to contain errors and are as sensitive to error as the rankings in A.C. 36-3 are not suitable as a basis for exclusion from an airport.

7. It is not reasonable to use certificated takeoff noise levels as a means of rating relative takeoff noise exposure in communities near airports. The certification takeoff procedures are not used in daily operation and takeoff gross weights are seldom at the maximum values shown in the Advisory Circular. Therefore, the relative community noise contribution of two aircraft types may be quite different than the relationship between their certification takeoff noise levels.

8. The poor correlation between A.C. 36-3 takeoff levels and community annoyance is well illustrated by the fact that the DC-8-20 and the DC-10-30 are adjacent on the chart at 95.8 and 95.4 respectively. The DC-8-20 is an early model powered by a straight turbojet engine and clearly recognized as one of the noisiest aircraft in the fleet. The DC-10-30 on the other hand is powered by a high bypass ratio engine and has a reputation as being among the least offensive aircraft in the airline fleet.

9. There is no estimate provided for numerous aircraft/engine configurations operated by the airlines. Many of the aircraft/engine configurations listed in the Advisory Circular are not currently operated by U. S. airlines. What is to be the source for the missing data?

10. There will undoubtedly be many alternate sources of data which disagree with the information in A.C. 36-3. For example, is the noise level information recently submitted by the U.S. to the ICAO CAN-6 meeting in BIP 24 consistent with the listings in A.C. 36-3? It is not clear how data conflicts are to be resolved.

Appendix N

—, CHAIRMAN
—, ORE.
—, WIS.
HENRY A. WAXMAN, CALIF.
MIKE SYNAR, OKLA.
ROBERT T. MATSUI, CALIF.

ROBERT S. WALKER, PA.
JIM JEFFRIES, KANS.
CLARENCE J. BROWN, OHIO

(202) 225-7920

NINETY-SIXTH CONGRESS

Congress of the United States

House of Representatives

GOVERNMENT ACTIVITIES AND TRANSPORTATION
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-350-A-B
WASHINGTON, D.C. 20515

October 24, 1979

Honorable Langhorne M. Bond
Administrator
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C. 20591

Dear Mr. Administrator:

I have been informed that errors in an FAA Advisory Circular may have created a serious problem for the Airports Commission of the City and County of San Francisco as it attempts to comply with the State Noise Law of California. I would appreciate your immediate attention to this problem.

As I understand the situation, the Commission dropped its original "Interim Noise Policy" because the FAA declared it to be discriminatory and therefore illegal, and threatened the Commission with loss of ADAP funding should the policy, based on FAA Advisory Circular 36-3, "Estimated Airplane Noise Levels in A-Weighted Decibels".

That circular contains certain factual errors, which should be corrected promptly, and certainly before it is discussed at the subcommittee's scheduled hearings on noise and safety problems at the Burbank-Glendale-Pasadena, California, airport. These corrections are essential, particularly since the Airports Commission appears to believe that no policy can be implemented until those corrections are made.

The Commission has also requested, in the attached October 5, 1979, letter to Clark Onstad, Chief Counsel, that the FAA assign a "high level technician" to work with the Commission. I believe that some FAA action along these lines would be appropriate, and request that you do so.

Thank you in advance for your cooperation.

Sincerely,

JOHN L. BURTON
Chairman

JLB:BRB:bg

cc: San Francisco Airport Commission

OCT 2[illegible]

Appendix O

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

DATE: NOV 7 1979

WASHINGTON, D.C. 20591

IN REPLY REFER TO:

SUBJECT: San Francisco International Airport Noise Regulations

FROM: Director of Environment and Energy, AEE-1

TO: AGC-1

I have read the letter to you from Richard Heath, Director of Airports, City and County of San Francisco, dated October 5, 1979, and his enclosed memorandum to the Airports Commission of September 25, 1979. Inasmuch as my name is featured prominately in those two documents, I feel compelled to comment on the content and merit.

Several weeks ago, I had a 20-25 minute telephone conversation with Mr. Feener of Mr. Heath's office. Mr. Heath characterizes that conversation as an admission by me that our Advisory Circular 36-3 contains "substantial errors in describing aircraft and also substantial omissions in certain aircraft models and configurations which are utilized at this Airport." This characterization is, at best, misleading, and, at worst, patently untrue. I explained to Mr. Feener the basis on which the data in AC 36-3 were derived, and noted that there are some errors in the explanatory "Notes" included in that tabulation of aircraft noise levels. Specifically, Note "1", which indicates application of P-36 acoustic treatment, was inadvertently assigned to models of aircraft other than the DC-9, to which it properly applies. I further advised Mr. Feener that I knew of no inaccurate noise levels in the Advisory Circular, and possibly levels for some specific aircraft models might not be included (e.g., the Russian IL-62). If any missing data were important to San Francisco International Airport, I would provide our best information for those models.

The characterization of AC 36-3 as riddled with errors, based on technically questionable assumptions, and clearly unsuitable as a basis for banning aircraft from operation at an airport, appears to originate with the Air Transport Association and some of its member airlines. Keeping to its obstructionist tradition, the ATA has attacked AC 36-3 in this manner in an effort to discredit it and thus delay its use by airports for noise abatement purposes. The ATA has taken this position with each item of guidance or technical assistance which we have developed for noise purposes (e.g., the Integrated Noise Model) as a delaying tactic, and has been relatively successful.

I would point out however that it was Mr. Heath who adopted a 102 dB criterion for use restriction at San Francisco, the effect would have been nil, since (he claims) no such aircraft exist in the domestic fleets. First of all, he (not FAA) suggested the 102 2B criterion, and he should have examined its effect before proposing that value. Secondly, United Air Lines flies some models of the DC-8 which do exceed 102 dB in the AC 36-3 tabulation (and this may be the primary impact which Mr. Heath wants to avoid). Thirdly, his regulation will also apply to foreign air carriers, who probably have excluded aircraft in their fleets. Mr. Feener said he will furnish me the basis for this statement next week, and I will know more then.

I have offered to assist personnel from San Francisco International Airport in developing and implementing a noise abatement regulation. While we are not staffed to provide each airport with an "on-site" individual, we certainly will continue to support the San Francisco effort to the maximum extent feasible.

JOHN E. WESLER

Appendix P

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

WASHINGTON, D.C. 20591

NOV 7 1979

Mr. Richard R. Heath
Director of Airports
Airports Commission
San Francisco International Airport
San Francisco, California

Dear Mr. Heath:

I have delayed responding to your letter of October 5 because I wanted to ascertain John Wesler's view of your allegation. As you will see from the enclosed memorandum, it would appear that your actions reflect both somewhat rash conclusions and are factually unsound. In fact I am quite surprised by your actions because they are so closely aligned with those of the Air Transport Association. Thus your letter of October 5 alleges FAA Advisory Circular 36-3 contains "substantial errors." This allegation has also been raised by the Air Transport Association. Senior FAA technical analysts have reviewed this Advisory Circular, as well as the source documents used in developing it. Based on that review it appears that some of the explanatory "Notes" in AC 36-3 were incorrectly coded, and work is now in progress to revise and correct those entries.

In my view these relatively minor technical adjustments do not in any way effect the concepts we discussed. As more and more data becomes available on the wide variety of aircraft models, engines and configurations it may be necessary to further revise technical conclusions. As you know the entire subject of aviation noise is dynamic and continually changing as we learn more and more. At the risk of repeating myself however, the fact of these technical developments and corrections do not, in my view, impact or effect the concepts we discussed.

NOV 13 '79

I have taken the liberty of sending copies of this letter to all of the recipients of your September 25 memorandum since I believe it is important that they understand our perspective.

Sincerely,

Clark H. Onstad
Chief Counsel

cc: Mary Schuman
General Counsel
Civil Aeronautics Board
1825 Connecticut Avenue, N.W.
Washington, D.C. 20428

Mr. Moris Bernstein
President
Airports Commission
City and County of San Francisco
San Francisco International Airport
San Francisco, CA 94128

Mr. William K. Coblentz
Vice President
Airports Commission
City and County of San Francisco
San Francisco International Airport
San Francisco, CA 94128

Ms. Ruth S. Kadish, Member
Airports Commission
City and County of San Francisco
San Francisco International Airport
San Francisco, CA 94128

Dr. Z. L. Goosby, Member
Airports Commission
City and County of San Francisco
San Francisco International Airport
San Francisco, CA 94128

Mr. J. Edward Fleishell, Member
Airports Commission
City and County of San Francisco
San Francisco International Airport
San Francisco, CA 94128

Appendix Q

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

WASHINGTON, D.C. 20591

OFFICE OF
THE ADMINISTRATOR

November 8, 1979

RECEIVED

NOV 13 1979

OPERATIONS & ENGINEERING
DEPARTMENT

General Clifton F. von Kann
Senior Vice President
Operations and Airports
Air Transport Association
1709 New York Avenue, N.W.
Washington, D.C. 20006

Dear General von Kann:

I welcome the opportunity, afforded by your letter of October 9, to discuss the merits and potential use of our recent Advisory Circular (AC) 36-3, "Estimated Airplane Noise Levels in A-Weighted Decibels," dated May 29, 1979. Your letter criticizes both the content of this Advisory Circular and the use to which it may be put by airport proprietors, and requests that it be withdrawn or cancelled immediately.

As you recognized in your letter, AC 36-3 does provide one means by which airport proprietors may impose nondiscriminatory use restrictions at their airports for noise control purposes. Recently, in their search for methods to limit the noise impacts around their airports, airport proprietors have proposed a number of different bases for restricting aircraft use. These have included limitations or restrictions on new entrants, exclusions of non-noise-certificated aircraft, jet bans, and single-event noise measurements.

Where use restrictions are intended to limit noise, we believe that such restrictions should be based on the noise which particular aircraft generate under standardized, repeatable conditions. We published AC 36-3 to provide comparable noise levels for a wide variety of aircraft models, as measured or estimated under the procedures specified in 14 CFR 36. These values provide a straight-forward, consistent basis which airport proprietors may use in imposing noise restrictions where they are necessary, and follow the policies contained in our Aviation Noise Abatement Policy and our general approach to land-use planning around airports.

You also criticize AC 36-3 as "technically indefensible." I must reject that charge. The data included in AC 36-3 were taken from earlier Advisory Circulars 36-1B (issued December 5, 1977) and 36-2A (issued February 6, 1978). In most cases, the values tabulated in AC 36-3 were taken directly from measured sound spectra. In those few cases where measured spectra were not available, Effective Perceived Noise Levels were converted to A-Weighted Sound Levels using established calculation procedures. We are aware that, inadvertently, some of the explanatory "Notes" included in AC 36-3 were

coded incorrectly, and we are revising those entries. We will also correct any other inaccuracies which we may find. In this connection, we welcome any specific information or data concerning specific errors or inaccuracies which you may find, and any deletions or additions to the models of aircraft which we have listed. In particular, in your letter you questioned the values tabulated for a stretch DC-8 and for three Boeing models. Those values are consistent with previously published values and appear to be correct. We are examining the original data; however, and we will correct these and any other values that we find to be inaccurate.

In summary, I must reject your charges that AC 36-3 is "riddled with errors, based on technically questionable assumptions and clearly unsuitable as a basis for banning aircraft from operations at an airport." It has been, and remains our stated policy to reduce noise impacts around airports in this country, insofar as is possible within Constitutional and statutory safeguards. AC 36-3 provides one tool which may be used toward that goal.

Sincerely,

Langhorne Bond

Langhorne Bond
Administrator

Appendix R

October 25, 1979

Mr. Langhorn Bond, Administrator
Federal Aviation Administration
Washington, D.C.

Dear Langhorn:

It was a pleasure to see you again and listen to your address to the Commonwealth Club last week.

I would like once again to solicit your assistance in an effort which is extremely important and particularly to our efforts to reduce the noise impact on the surrounding communities.

One of the tentative recommendations which is before the Joint Land Use Board and which, I feel certain, will become a final recommendation of that Board, is for the installation of a more sophisticated noise monitoring system at this Airport. Such a system must be designed to monitor both low frequency as well as high frequency noises. In addition, the system must be able to tie the noise produced to specific operations. This will permit the Airport to affectively utilize a number of economic incentives and disincentives in our noise mitigation efforts. It will also permit public opinion to apply pressure to airlines to operate their aircraft in a quiet manner and to invest in new and quieter airplanes.

You will recall that I wrote you previously about the installation of such a system at San Francisco. You pledged your full support to that effort. You indicated that the Boston Airport was working on such a system and that we would be included in the common efforts of Boston and the FAA.

The General Council for the FAA has appeared here as part of our Land Use Study and has pledged full FAA technical support to the successful completion of that study.

In light of all this, I hereby formally request that the FAA immediately assign to San Francisco a technician or technicians to work directly with to design a system which will effectively tie our Noise Monitoring System to the FAA's system so that we may measure and record the actual noise produced by each operation at this Airport.

Your immediate response to this request will be greatly appreciated.

Yours very truly,

Richard R. Heath
Director of Airports

cc:Clark Onstead
Gen. Counsel, FAA

Per attached list

RRH/rml
bcc:Admin
Chron
File

cc:Hon. William Royer
Member of Congress
2121 So. El Camino Real
San Mateo, CA 94403

Hon. John M. Ward. Supervisor
County of San Mateo
Hall of Justice and Records
Redwood City, CA

Hon. J. Edward Fleishell
Airports Commission
San Francisco Int'l Airport
P.O. Box 8097
San Francisco, CA 94128

William K. Coblentz, Esq.
Airports Commission
555 California Street - #3100
San Francisco, CA 94104

Councilman Arthur Lepore
City of Millbrae
621 Magnolia Avenue
Millbrae, CA 94030

Councilman David Martin
Town of Burlingame
501 Primrose Road
Burlingame, CA 94010

Mr. Ken Brown
Executive Vice President
San Mateo Chamber of Commerce
2031 Pioneer Court #2
San Mateo, CA 94403

Hon. Louise Renne, Vice Chairman
SFO/SMC Joint Land Use Study
P.O. Box 8097
San Francisco Int'l Airport
San Francisco, CA 94128

Mr. Peter Cervantes-Cautschi, Sect
Airport Labor Coalition
300 Eighth Avenue #1
San Mateo, CA 94401

Mr. Vincent J. Mellone, Chief
BAY TRACON
Department of Transportation
P.O. Box 2367, Airport Station
Oakland, CA 94614

Members of the Council of the
Town of Hillsborough

Appendix S

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

WASHINGTON, D.C. 20591

NOV 26 1979

Mr. Richard R. Heath
Director of Airports
Airports Commission
San Francisco International Airport
San Francisco, California 94128

Dear ~~Mr. Heath~~:

The Administrator has asked me to respond to your letter of October 25 concerning the design and installation of a more sophisticated noise monitoring system at San Francisco International Airport. As you noted in your letter the Massachusetts Port Authority is working on the design and development of a system for use at Boston-Logan Airport similar to that which you described. While this is not an FAA technical effort, FAA is working with Massport to assist them in their effort. As you are no doubt aware, the FAA has a limited budget and staff. Accordingly we are not able to assign technical personnel to San Francisco to design a system for your airport. We suggest you contact the Massachusetts Port Authority in order to gain the full benefit of the design and development work completed to date rather than engage in a total design and development effort.

Sincerely,

Clark H. Onstad
Chief Counsel

NOV 23 '79

Appendix T

AIRPORTS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO
DIANNE FEINSTEIN MAYOR

SAN FRANCISCO INTERNATIONAL AIRPORT
SAN FRANCISCO, CALIFORNIA 94128
(415) 761-0800

MORRIS BERNSTEIN
PRESIDENT
WILLIAM K. COBLENTZ
VICE-PRESIDENT
RUTH S. KADISH
DR. Z. L. GOOSBY
J. EDWARD FLEISHELL

RICHARD R. HEATH
DIRECTOR OF AIRPORTS

November 20, 1979

Mr. Clark H. Onstad
Chief Counsel
Federal Aviation Administration
Washington, D. C. 20591

Dear Clark:

I surely did enjoy that last letter you wrote! An' John Wesler's memo was a real whiz bang. Sure does go to show how wrongheaded us provincial types are compared to you folks in Our Nation's Capital.

Them documents was so ed-u-kay-shu-nal that I plum decided to use 'em to give my little nephew Tommie a civics lesson.

"Tommie," I said, "you read these here two papers and then we'll talk about 'em."

So Tommie he poured over them two papers fer a few minutes and then he says, "Unca Dick, I got a couple questions."

"What questions you got, Tommie?"

"Well, first of all, those explanatory notes. Are they relavent?"

"I'm sure I don't know, Tommie. Why do you want to know that?"

"Cause if they ain't relavent they got no business being in the regulations in the first place; and if they are relavent they ought to be right; and if they ain't right, they're wrong; and if they're wrong, they're in error!"

"Why, Tommie!", I says, "What you tryin' to do? Reform the world?"

"And, Unca Dick," he comes back, "I got another question. If that regulation was so all-fired perfect the first time outa the box, why they gonna revise an' correct it?"

"Tommie, I see now jest what yer problem is. You had a course in school in logic but you ain't had no tutorin' in guv-mint. You go tryin' to put that there logic to work in 'splainin' what our federal guv-mint is up to, an' you plain gonna have real problems."

"Well, at school if one of us kids makes a mistake, teacher makes us admit we made a error an' we gotta correct it. Ain't that the way the federal guv-mint works?"

"No, Tommie. It ain't. Sit down here an' I'll esplain it. See, back there in Our Nation's Capital, they got two big deals goin'. First is the Congress, and second is the bureaucracy. That thar Congress votes the money and the bureaucracy runs the guv-mint. Them is very important jobs. That ol' bureaucracy is gettin' bigger an' bigger an' that makes that ol' Congress more and more important. So that ol' Congress jest votes more and more money an' that ol' bureaucracy jest spends and spends it. Now, you can't have them big, important folks spendin' all thet big, important money out there, makin' no errors, 'cause that might git the people riled. So I think what happened is that Congress done passed a law sayin' that makin' errors was just plum illegal. Be bad fer policies both furrin an' domestic. (To say nothin' o' politics.) So that's lesson number one: ain't no way none of them Washington types kin ever make a error."

"O.K., Unca Dick. But now I got some more questions. Why do you s'pose that John Wesler used the Russian IL-62 as a example of a airplane that he forgot to put on his list?"

"Why, Honey Chile, I reckon that was jest the first li'l ol' airplane that popped into his head."

"Well, it just seems funny to me he'd mention some ol' Russian plane 'instead of, say, a DC-8-51."

"Weren't a DC-8-51 put down on that list?"

"No. An' neither was a DC-8-52, nor a DC-8-54, nor'a DC-8-33."

"Do them airplanes exist?"

"Sure do. An' operate out of San Francisco. An' that list is also missing 707-331s an' 707-338s an' 707-123s an' 747-136s an' 747-312Bs an' 727-035s an' ... "

"Now hang on thar, Tommie. You sure all them planes exist?"

"Sure am. An' just as sure they fly at SFO."

"Well, gracious, Chile, you can't expect perfection! That John Wesler, now, he's one o' them technical bureaucrats. You can't expect him to know jest every ol' airplane that anybody's got hoppin' around. Why that'd be a turrible chore fer him to collect all them numbers. Say, tell me, Tommie. How in tarnation did you get all them numbers?"

"Why I just wrote the ATA."

"You wrote the ATA? Ain't you got no sense? Why look right here in this letter. It says plain as day that they're nothin' but an obstructionist outfit."

"Well that may be, Unca Dick. But I made sure their list was right. I wrote to Boeing and McDonald Douglas and Lockheed and such like and then I put all their lists together against the ATA list and it was O.K. An' that's how I come by my list."

"Well, that's alright for you, Tommie. You're jest a 'leven year ol' school boy. You can't 'spect a big technical bureaucrat with the Federal Aviation Administration to spend his days writin' letters all over the dadburned country jest to get up some ol' list er other."

"But tell me, Unca Dick, if that list don't have all the airplanes on it and if part of it is plain wrong - 'scuse me - if some of them notes is a wee bit misplaced, how the world you gonna enforce that regulation?"

"Enforce it? Enforce it? Why, Chile, thar's prob'ly a thousan' or so ways to enforce it. Why just let me think a minute an' I'll shorely come up with several. Why you could ... An' if thet didn't work, you could ... An' then you might try ... Well, land a goshen, you kin always jest whip out another regulation. Now Tommie, I don't jest have all day to figger out the answer to everyone of your questions. Let me jest tell you, a body could sure 'nuff figger out some ways 'cause that's what them fellers in Washington say and that ol' Congress jest wouldn't let 'em say it if it wasn't so!"

"But did they ever run a airport, Unca Dick?"

"Now you're getting' downright impertinent! When you're back thar in Our Nation's Capital spendin' all that big money and makin' all them big decisions, you don't have to know how to run nothin'! The business of the federal guv-mint is writin' regulations. An' that's yer second lesson in civics".

"Well, Unca Dick, is that ol' 36-3 regulation any use to you the way it now stands?"

"Any use? Any use? Why you gotta be sure it's a whole lot o' use. See it's jest like the question of weights. You take a bad ol' airplane up thar at the top of the list makin' all kinds o' noise an' commotion, an' you take half the cargo outta it and it plum quiets down 'till it ain't no worse than them goody-goody-two-shoes airplanes thar towards the bottom of the lists. But them boys in Washington they know that the folks who live round this Airport, they ain't concerned with such as that. They don't care a dern fer how much noise that ol' airplane makes over their house. What they want to know is how much noise does it make on paper! So far as useful, that 36-3 is useful as mud to a hog. I guv a copy of it to all my employees an' ever time they's any noise round here they jest wave the bejesus out o' that paper an' that kills thet noise deader'n a louse."

"I got only one last question, Unca Dick. How come those two big Washington guys said that you was closely aligned with the ATA and United an' all that?"

"Well, Tommie, you got to unnerstan' conspiracies. See now when two folks both say the same thing bad about the same agency of our federal guv-mint, (Salute the flag, Son!) and 'specially when that bad thing said is that there was a ERROR er a OMISSIONS er

both in a regulation of that thar guv-mint, why thet's jest plain agin' the law! An' it's jest as plain as the nose on yer face that they done got together an' conspired to overthrow that guv-mint by force and violence!"

"Or logic?"

"By force, violence or logic! In Washington, they all count the same. An' that's yer third lesson in civics for today.

"Now you run along 'cause I got a office full of friends an' neighbors out there waitin' to see me. There's Anita and Sylvia and Tom and Art and Dave and Ellie and Don an' I don't jest know how many of their friends. I think they all come up here to thank me an' the FAA pro-fuse-ly fer solvin' their noise problem so easylike by puttin' that 36-3 in the hands of ever' dang airport employee. Yah! I'm purty sure that's what they're here for. Listen to 'em poundin' on that ol' door."

Sincerely,

Richard R. Heath
Director of Airports

P. S. I reckoned it would be good for all those folks who got your perspective to get Tommie's, even if he is just a precocious 11-year old know-it-all. So I sent copies to them an' to a few others.

cc: Ms Mary Schuman
Members, Airports Commission

Appendix U

AIRPORTS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
DIANNE FEINSTEIN MAYOR

SAN FRANCISCO INTERNATIONAL AIRPORT
SAN FRANCISCO, CALIFORNIA 94128
(415) 761-0800

MORRIS BERNSTEIN
PRESIDENT
WILLIAM K. COBLENTZ
VICE-PRESIDENT
RUTH S. KADISH
DR. Z. L. GOOSBY
J. EDWARD FLEISHELL

RICHARD R. HEATH
DIRECTOR OF AIRPORTS

November 23, 1979

Mr. Clark H. Onstad
Chief Counsel
Federal Aviation Administration
Washington, D. C. 20591

Dear Clark:

Now that you've had time to digest the fable of Nephew Tommie, let me be serious about the problems of 36-3. I am not opposed to using this methodology. However, I believe it has serious limitations and should only be considered for use until a better system is employed.

Our immediate problem with 36-3 was that in its initial state it is unusable. Our proposed policy based on 36-3 was to be an interim policy designed to take us only to the end of the Land Use Study. When the replies from the airlines came in and we learned of the errors and omissions that were admittedly going to be corrected in a later version, it became clear that the revision could not possibly be done in time to provide a solid basis for a noise policy to be implemented prior to the end of this year. Until 36-3 is error-free and all-inclusive, we can't even determine what effect any policy based on it would have.

Wesler's statement that we should have run something or other through some computer before we established a cut-off line is the purest poppycock. No computer could tell us a blessed thing we needed to know until we could tell the computer what operations would occur without such and such a cut-off line as compared to what operations would occur with such and such a cut-off line. The noise consultants doing the Land Use Study and Peat Marwick both agree. Perhaps someone should tell your people that residence in Washington does not confer omniscience. Technicians do reside elsewhere.

Without any true reading on what planes would, in fact, be eliminated by drawing a line at any level, no computer run would be worth a thing. We knew that before we even talked about 102. That's why we asked each airline to provide us the data on what operations would be eliminated at each decible level from 106 to 102. We had to have that to know what the adverse effects of a policy with a cut-off at each level would be. We could have pulled a fast one on the local people by drawing the line at 107, thus eliminating only the Concorde. We don't play that way. (Our friends and neighbors wouldn't let us even if we wanted to.) We could have kept the airline replies secret and drawn the line at 102, knowing that no airplane would be eliminated because of the errors you prefer to call "displaced notes." We don't play that game, either. So we withdrew from the 36-3 alternative temporarily.

The result is not fatal, since deregulation has not resulted in a great increase in flights. Fuel costs and allocations are, in fact, now cutting back operations slightly.

AC 36-3 when revised may provide us a mechanism for some short-term policies which will certainly be helpful. Differential pricing can be based on its standard test data. And time of day differentials can be added in. But 36-3 will never provide a sound basis for the research efforts we are committed to. For that, we need to move forward rapidly on developing an effective system of measuring actual noise produced by various actual aircraft in various weather conditions utilizing various runways and following various SAFE noise mitigation procedures. 36-3 can never provide the basis for such research.

We are working with the Metropolitan Transportation Commission on the possible implementation of a regional noise banking system. Such a system could be based on 36-3 and, as an interim measure, might have to be. But for real effectiveness, 36-3 must give way to a measuring system that records the actual noise produced in all neightborhoods by various operations. We have done enough research to know that such a system can be developed and can be totally automated with FAA cooperation. We are asking Langhorne Bond for that cooperation. We hope you will support that request. A copy of my letter to Langhorne is enclosed.

Sincerely,

Richard R. Heath
Director of Airports

enclosure
cc: Mr. Langhorne Bond
Ms Mary Schuman

Appendix V

AIRPORTS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO
DIANNE FEINSTEIN, MAYOR

SAN FRANCISCO INTERNATIONAL AIRPORT
SAN FRANCISCO, CALIFORNIA 94128
(415) 761-0800

MORRIS BERNSTEIN
PRESIDENT
WILLIAM K. COBLENTZ
VICE-PRESIDENT
RUTH S. KADISH
DR. Z. L. GOOSBY
J. EDWARD FLEISHELL

RICHARD R. HEATH
DIRECTOR OF AIRPORTS

November 23, 1979

Mr. Langhorne Bond
Administrator
Federal Aviation Administration
800 Independence Ave., S.W.
Washington, D. C. 20590

Dear Langhorne:

I hope you will recall that about two years ago Commissioner Ruth Kadish and I had a chat with you in your Washington office. We talked about many things, but one of the points we made was that we needed to develop a system at San Francisco that would permit us to tie our noise monitoring system to the FAA system in order to identify the actual aircraft engaged in the operation and producing the noise we are measuring. Such a system is needed as much for research purposes as for regulatory purposes.

We pointed out that San Francisco International has some problems that may be unique. Our location in a natural amphitheater increases the adverse effect of low frequency noise. We badly need the ability to determine the true mitigation effects of various flight procedures in order to lower noise levels sufficiently to avoid the imposition of operational restrictions that could have grave economic consequences. We think that economic incentives and disincentives can be utilized in a variety of ways that will be effective if we can accurately determine the noise produced by each operation. We are certain this can be done without lowering any safety standard.

Your response at that time was very positive and gave us cause for optimism. You later wrote to one of your officials telling him to cooperate with us and to keep us posted on the progress being

made at Boston as well as on the system then being installed at National and Dulles. We were to be invited to participate in the Boston study.

It is now my sad duty to report to you that we have received exactly nothing in the way of assistance from the FAA. While local officials have been highly cooperative on everything else, they lack the technical expertise and the authority to help on this.

As you know, our ANCLUC study is coming to its close. It was my hope, the hope of the Airports Commission, the hope of the Joint Powers Board, and the hope of our friends and neighbors that the requested system could be designed and installed by the time the land use study was completed. That hope is fast dying. The need has not diminished.

I know that many of your people, especially in Washington, have grave concerns about what such a system will do to operational safety. Obviously, if it were used to mandate unsafe procedures, the results could be catastrophic. But no responsible person supposes that that would be the case.

I have heard the argument used that if an individual operation is financially penalized because a safe but noisier procedure is followed by a pilot, the pilot may elect the less safe procedure and risk an accident. I don't know if that is official FAA policy, but whether it is or not, I would certainly argue that it is incorrect. It puts in question the basic professionalism of the pilot. I find it very hard to imagine any certified pilot for any certified carrier taking a chance with his aircraft with the lives of his passengers and with his own life in order to save his company a few bucks.

Does anyone really believe that it is inimical to safety for pilots to consider time and fuel efficiencies in their handling of their aircraft? Can anyone cite an example of a professional pilot deliberately choosing to cut two minutes off his flight time or deliberately choosing to save a few hundred gallons of fuel when in doing so he risks the safety of his plane and his passengers? Why is noise mitigation any different? Our goal is simply to have the pilot and the carriers crank into their thinking and planning considerations, thoughts as to how the operation can be completed safely but with minimum

noise impact on the surrounding communities. We want to develop a system with the research capabilities to make those mitigation plans most effective.

You and I both know that every pilot has a large number of things to consider in operating an aircraft. To say that adding noise considerations will overload the pilot's thinking apparatus is to falsely denigrate the human brain.

Obviously, the system we desire is possible of attainment. You have installed one version at your Washington airports. The reports are that the mere publication of data has had a positive effect.

Instead of assistance in this direction, we have been advised to use Advisory Circular 36-3. It will be of some value as a short-term device, but would never be worth a nickel for research purposes. It is of no value at all until the errors and omissions are corrected and variable values are assigned based on aircraft weight. Even then it will be subject to arguments within the industry as to its accuracy and fairness since it is not based on actual tests, but only on theoretic values.

Everyone who lives close to or works at a noisy airport knows that noise varies with weather conditions and with the flight procedures selected by the pilot. Sometimes a pilot has no choice. There is only one safe procedure. But where alternate safe procedures are available and one is quieter, why not construct a system that will encourage the pilot and the carrier to utilize the less noisy way to fly?

And how can we possibly work with pilots, carriers and our neighbors to find quieter alternatives if we do not have a way to measure the actual noise produced by actual operations?

No FAA official has said it is against the law to install such a system, but there is obviously some lack of enthusiasm in Washington in providing us any help in this effort.

The methods now utilized at the Washington airports and the one used in Boston are both relatively labor intensive. We will spend the money to develop and install a system here in San Francisco, with or without FAA assistance. But a much better automated system which would be cheaper and which would remove the human error factor could be developed if everyone were committed to do it and worked together to get it done.

I assume your commitment still stands. I hear that the Regional Office in Los Angeles may have the technicians required. If that be true, your giving the Regional Director authority to provide the assistance we request would be greatly appreciated.

For your edification and, perhaps, amusement, I enclose an exchange of correspondence between Clark Onstad and myself. Clark was a bit miffed at some of my remarks and I, of course, was absolutely delighted with his reply. Hence the fable of Nephew Tommie. Clark and I are still good friends, even if we don't always agree.

Sincerely,

Richard R. Heath
Director of Airports

enclosures

cc: Mr. Clark H. Onstad
Ms Mary Schuman

Appendix W

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

WASHINGTON, D.C. 20591

DEC 13 1979

Mr. Richard R. Heath
Director of Airports
Airports Commission
San Francisco International Airport
San Francisco, California 94128

Dear Mr. Heath:

With respect to your letters dated November 23, 1979, I believe our prior communication concerning Advisory Circular 36-3 should remove your concern regarding the technical aspects of that document. We have not received any technically supported information indicating that the data in that document is incorrect. As I advised in my letter of November 7, there were some discrepancies in note material but these didn't affect the listed noise levels.

I fully appreciate the need for sound technical support for policy decisions. The FAA has cooperated with you in your efforts to establish a noise-monitoring system at San Francisco International Airport. The Chief of our Air Traffic Service ATC Automation Division met with Mr. Feener of your office and Mr. Thron, the technical consultant for the Massachusetts Port Authority (MASSPORT), at our National Aviation Facilities Experimental Center office in Atlantic City, New Jersey, about a year ago. The purpose of that meeting was to achieve a better understanding of what we were doing, as well as the MASSPORT progress.

At this time, I would like to apprise you of modified schedules of our planned installation activity. I am pleased to tell you that the necessary equipment will be installed in our Oakland TRACON site in February 1980. This means that we may be able to provide you with disk-recorded data by mid-March. The first system is being installed in Boston in early January and it is our understanding that MASSPORT anticipates initial use of the

DEC 13 '79

disk information by March 1980. An Air Traffic Service representative will contact Mr. Feener with more specific schedule information within the next 2 weeks.

Sincerely,

Clark H. Onstad
Chief Counsel

Appendix X

AIRPORTS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
DIANNE FEINSTEIN, MAYOR

SAN FRANCISCO INTERNATIONAL AIRPORT
SAN FRANCISCO, CALIFORNIA 94128
(415) 761-0800

MORRIS BERNSTEIN
PRESIDENT
WILLIAM K. COBLENTZ
VICE-PRESIDENT
RUTH S. KADISH
DR. Z. L. GOOSBY
J. EDWARD FLEISHELL

RICHARD R. HEATH
DIRECTOR OF AIRPORTS

January 9, 1980

Mr. Clark H. Onstad
Chief Counsel
Federal Aviation Administration
Department of Transportation
880 Independence Avenue, S.W.
Washington, D.C. 20591

Dear ~~Mr. Onstad~~ Clark:

Thank you for your advanced notification with respect to the installation of the disk-recorded data system at the Bay/TRACON. We have been in contact with Bob Kelm of FAA Western Region and with the Bay/TRACON and hope to experiment with data from the improved system by June or July 1980.

My concerns with respect to Advisory Circular 36-3 remain unchanged. From your previous letter I understand that a revised AC-36-3 will be published which will correct the discrepancies in note material, and that it will include a description of all aircraft operating in the airline fleet. When can we anticipate receiving this revision?

Yours truly,

Richard R. Heath
Director of Airports

Appendix Y

AIRPORTS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 80-0080

WHEREAS, The Community of Outer Mission Organizations (COMO), other neighborhood groups representing citizens living in the southern half of San Francisco, and numerous individual residents of that area, have filed many complaints with this Airport concerning the noise impact caused by commercial jet aircraft flying at low altitudes over the residential neighborhoods in this geographic area; and

WHEREAS, Concern has been expressed for the safety of residents under such overflights; and

WHEREAS, The frequency and vehemence of such complaints has increased substantially over the past year; and

WHEREAS, Members of the San Francisco Board of Supervisors representing districts in the southern half of the City of San Francisco have expressed their growing concern over this situation; and

WHEREAS, Under federal laws and regulations, this Commission, as the proprietor of the San Francisco International Airport, has absolutely no power or authority over the flight paths utilized by aircraft in flight, regardless of the origin or destination of such aircraft; and

WHEREAS, The flight path of each commercial jet aircraft is determined by the procedures and regulations of the Federal Aviation Administration, by the pilot of the aircraft, and by the air carrier owning and/or operating such aircraft; and

WHEREAS, This Commission feels strongly that those agencies and individuals having the power and authority to control the flight paths of aircraft flying in the Bay Area air space should make every

AIRPORTS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 80-0080

effort consistent with applicable safety standards to direct the flight of all commercial jet aircraft so as to avoid flying over the densely populated areas of the Bay Area and particularly the southern half of the City of San Francisco and, wherever feasible, the flight paths of such aircraft should be conducted over water and not over land; now, therefore, be it hereby

RESOLVED, That this Commission strongly urges the Federal Aviation Administration officials in charge of the Bay Area Traffic Control District (Bay Tracon), along with appropriate representatives of the commercial jet aircraft pilots and the scheduled jet air carriers operating into and out of the Bay Area to commence immediately a coordinated re-examination of relevant flight policies and practices to determine what changes can reasonably be made which will substantially reduce commercial jet flights over the southern half of the City of San Francisco and over other heavily populated land in the Bay Area and which will redirect, wherever possible, such flights over water; and be it further

RESOLVED, That this Commission urges the Federal Aviation Administration, the pilots and air carriers to take all appropriate actions to accomplish a significant reduction in such overflights as soon as possible; and be it further

RESOLVED, That this Commission further requests that the officials of Bay Tracon keep it informed, through the Director of Airports, of the progress beng made in accomplishing the actions recommended herein; and be it further

AIRPORTS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 80-0080

RESOLVED, That the Director of Airports is hereby directed to make appropriate distribution of this resolution to all interested public officials and private citizens.

I hereby certify that the foregoing resolution was adopted by the Airports Commission at its meeting of APR 1 1980

Secretary

Appendix Z

GEORGE AGNOST
CITY ATTORNEY
CITY & COUNTY OF SAN FRANCISCO

AIRPORTS DIVISION
DONALD J. GARIBALDI
AIRPORTS GENERAL COUNSEL
DAVID I. KROOPNICK
ASS'T. AIRPORTS GENERAL COUNSEL
JAMES H. WOODS
CRISTINE E. GONDAS

P.O. BOX CENTRAL TERMINAL
SAN FRANCISCO INTERNATIONAL AIRPORT
SAN FRANCISCO, CA 94128
(415)876-2102
WRITER'S DIRECT DIAL NUMBER:
(415) 876-2102

March 12, 1980

Michael M. Berger
Fadem, Berger and Norton
501 Santa Monica Blvd., Suite 600
P.O. Box 2148
Santa Monica, Ca. 90406

Re: City of Los Angeles v. Greater Westchester Homeowners Association

Dear Mike:

The City and County of San Francisco, by and through its Airports Commission, requests your written consent to its participation in the referenced matter by the filing of a brief amicus curiae in support of the City of Los Angeles' Petition for Writ of Certiorari to the United States Supreme Court.

I understand that you have no objection to this request, and I would appreciate it if you would indicate your consent in the space provided below, and if you would then return the original of this letter to us so that it may be presented to the Court.

Very truly yours,

David I. Kroopnick

DAVID I. KROOPNICK
Asst. Airports General Counsel

Consent is hereby given to participation by the City and County of San Francisco, by and through its Airports Commission, as amicus curiae before the Supreme Court of the United States in the case of City of Los Angeles v. Greater Westchester Homeowners Association.

Dated: 3/17/80

Michael M. Berger
Attorney for Respondents

GEORGE AGNOST
CITY ATTORNEY
CITY & COUNTY OF SAN FRANCISCO

AIRPORTS DIVISION
DONALD J. GARIBALDI
AIRPORTS GENERAL COUNSEL
DAVID I. KROOPNICK
ASS'T. AIRPORTS GENERAL COUNSEL
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March 12, 1980

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(415)876-2100
WRITER'S DIRECT DIAL NUMBER:
(415) 876-2102

Burt Pines
City Attorney
Airport Division
1 World Way
Los Angeles, California 90009

Attn: Lawrence M. Nagin
Senior Assistant City Attorney

Re: City of Los Angeles v. Greater Westchester Homeowners Association

Gentlemen:

The City and County of San Francisco, by and through its Airports Commission, requests your written consent to its participation in the referenced matter by filing of a brief amicus curiae in support of the City of Los Angeles' Petition for Writ of Certiorari to the United States Supreme Court.

I understand that you have no objection to this request, and I would appreciate it if you would indicate your consent in the space provided below, and if you would then return the original of this letter to us so that it may be presented to the Court.

Very truly yours,

DAVID I. KROOPNICK
Asst. Airports General Counsel

Consent is hereby given to participation by the City and County of San Francisco, by and through its Airports Commission, as amicus curiae before the Supreme Court of the United States in the case of City of Los Angeles v. Greater Westchester Homeowners Association.

Dated: 3-18-80

Burt Pines

By: Lawrence M. Nagin
Lawrence M. Nagin
Attorneys for Respondents